

ONTARIO LABOUR RELATIONS BOARD REPORTS

September/October 2012



ONTARIO LABOUR RELATIONS BOARD

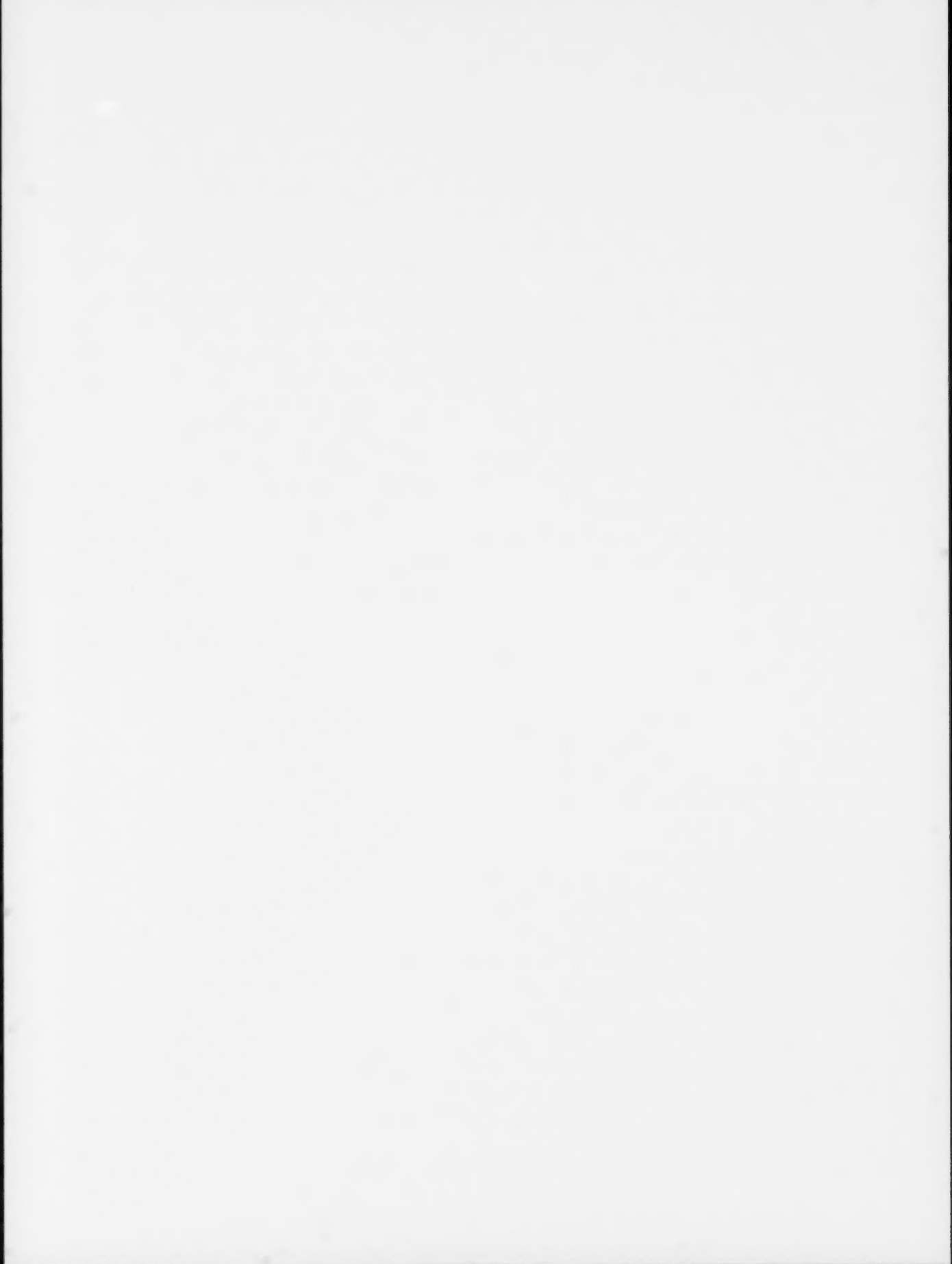
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ONTARIO LABOUR RELATIONS BOARD REPORTS

**A Bimonthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [2012] OLRB REP. SEPTEMBER/OCTOBER

**EDITORS: VOY STELMASZYNSKI
LEONARD MARVY**



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SUBJECT INDEX

Apprehension of Bias – Duty of Fair Representation – Judicial Review – The Applicant sought judicial review of a decision of the OLRB which dismissed the Applicant's complaint that the Algoma University Faculty Association had breached its duty of fair representation. The Board found that the Association properly evaluated the circumstances of the Applicant's grievances, and did not breach its duty of fair representation in responding to those complaints – The Court accepted that the standard of review for the Board's decision was reasonableness, and found that the Board's dismissal of the application was reasonable – The Board was not required to hold an oral hearing – It was the Applicant's responsibility to present the necessary facts to the Board in the complaint or reply – The Applicant alleged that the Board lacked impartiality, however, the fact that the Vice-Chair of the Board had decided another application of the Applicant did not demonstrate any partiality – The Court found no evidence that the Board failed to respect the language rights of the Applicant – Application dismissed.

RENÉ GAGNÉ; RE THE ONTARIO LABOUR RELATIONS BOARD; RE ALGOMA UNIVERSITY FACULTY ASSOCIATION

919

Bargaining Unit – Certification – Construction Industry – Practice and Procedure – Termination – The applicants sought certification pursuant to section 158(2) of the Act to represent bargaining units of construction labourers and operating engineers in specified Board Areas for all sectors of the construction industry other than ICI – The applicants were attempting to displace the intervenor, who held bargaining rights for all employees, including construction labourers and operating engineers, employed by the responding party – The issue was the appropriate bargaining unit – The applicants argued that, despite their application to "carve out" a subset of the intervenor's bargaining rights, the bargaining unit was deemed appropriate under section 158(2) and the Board was not required to find the *most appropriate* bargaining unit – The responding party and the intervenor argued that the applicants in such a displacement application must take the bargaining unit as they find it, submitting that the Board's approach to bargaining unit descriptions in a displacement application was an exception to section 158(2) – The Board held that the applicants must adduce their evidence first, since they knew on what facts they wanted to rely in order to show why the Board should depart from its displacement policy – With respect to the merits, the Board found that the applicants' bargaining unit was deemed to be appropriate under section 158(2) and that the applicants were entitled to "carve out" the proposed bargaining unit – The applications raised two distinct Board policies that might appear in conflict: the first is that the Board seeks to determine whether the applicant's proposed bargaining unit is appropriate, rather than attempting to determine the most appropriate bargaining unit; the second is that the Board in a displacement application normally finds the existing bargaining unit to be the appropriate unit – The Board found that those two policies were not inconsistent – Rather, the Board's approach in a displacement application was an *exception* to its usual practice of accepting the applicant's proposed bargaining unit, if appropriate, even if it was not the most appropriate bargaining unit – In these circumstances, the Board's displacement policy did not preclude the applicants from seeking to represent the employees in the bargaining units that they proposed – Matter continues.

EXPERCOM TELECOMMUNICATIONS INC.; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; RE PORT PERRY EMPLOYEES ASSOCIATION

802

Certification – Bargaining Unit – Construction Industry – Practice and Procedure – Termination

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EXPERCOM TELECOMMUNICATIONS INC.; RE LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247; RE LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; RE PORT PERRY EMPLOYEES ASSOCIATION

802

Certification – Construction Industry – Employer – One issue before the Board was whether four individuals were employees of the responding party – The Board reviewed the *York Condominium* “true employer” factors, and found that the SCC’s more comprehensive test, with its non-exhaustive list, set out in *Pointe-Claire (City)* better enabled the Board to determine which party exercises the most control over all aspects of the work of the employees in question – The Board found the individuals were integrated more thoroughly into the operations of B.M. Metals than AML, and that although a third connected business assigned some specific work to these individuals, B.M. Metals hired them to service a contract with Vale and they were only “rented” until needed – The two individuals were fundamentally part of the B.M. Metals organization and under the ultimate direction and control of B.M. Metals and accordingly employed by them – Certificates granted

B.M. METAL SERVICES INC.; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA

782

Certification – Unfair Labour Practice – UNITE HERE complained that Novotel had interfered with its organizing campaign in four ways: (1) departmental “roundtable discussions” amounted to captive audience meetings during which the employer made threats to the employees’ job security; (2) the virtual lay-off of the union’s main organizer was meant to send a message to employees; (3) Novotel’s practice of encouraging employees to report union activity amounted to surveillance and prevented employees from expressing their true wishes about the union at the vote; and (4) Novotel’s provision of false or misleading information to employees equally precluded the employees from revealing their true wishes at the vote – The Board heard no direct evidence that Novotel directed, asked or encouraged employees to inform on their co-workers; management listened to the reports and kept track of them, but there was no evidence that employees knew of the information gathering – The Board found that Novotel generated false or misleading information regarding the employees’ ability to retain their family doctors, or their ability to continue participating in the hotel’s RRSP programs; although there was ample time between the dissemination of this information and the representation vote for the union to correct the misinformation, the union failed to do so; nonetheless, Novotel’s conduct violated the Act – The employer’s witnesses gave conflicting testimony regarding the diminution of the organizer’s hours, and the concomitant creation of two full-time positions, neither of which was offered to the more senior employee/organizer – The Board found it was patently evident to all Novotel staff that the employee at issue was the chief organizer – Novotel was unable to persuade the Board that its conduct with respect to this employee, and the shift creation/changes was free of anti-union animus – Finally, the Board found that the employer’s various discussions of job security, taken individually, might not cross the lines of free speech, but cumulatively constituted coercion, undue influence and interference – Remedial certification ordered – Compensation for the discharged organizer, equivalent to her weekly hours of work, from her last day of work to the date of the decision

NOVOTEL CANADA INC.; RE UNITE HERE; RE ACCOR CANADA INC.; RE NOVOTEL MISSISSAUGA O/A HOTEL NOVOTEL TORONTO MISSISSAUGA CENTRE.....

836

Certification Where Act Contravened – Reconsideration – Remedies – Termination – The Board finds that a trade union seeking to rely on s. 11 relief predicated upon a contravention of the Act must at least file and deliver an application for certification if it expects to obtain a representation vote or remedial certification – Consistent with the scheme of the Act, the remedies available to the Board in subsection 11(2) are only available in circumstances where there is an application for certification – Matter continues

TOK TRANSIT LIMITED; RE TOK TRANSIT LIMITED, THE REGIONAL MUNICIPALITY OF YORK AND BILL FISCH; RE UNITED FOOD & COMMERCIAL WORKERS, LOCAL 206; RE AMALGAMATED TRANSIT UNION, LOCAL 113.....

909

Collective Agreement – Interest Arbitration – Reference – The Minister of Labour referred a number of questions to the Board for its advice pursuant to section 115 of the Act – The Union gave the City notice to bargain for renewal of the expired collective agreement – The Union advised the City that it would rely on Article 15.1 of the collective agreement to submit remaining matters in dispute to arbitration if bargaining was unsuccessful – Article 15.1 stated that if, after bargaining in good faith for the agreement’s renewal, either party may notify the other party in writing of its desire to submit the matters in dispute to arbitration if it becomes satisfied that an agreement cannot be reached –

Further, Article 15.1 provided that the Minister must appoint a single arbitrator upon the request of either party if the parties cannot agree to an arbitrator within fourteen days – The City argued that Article 15.1 was not an agreement of the parties as required by section 40(1) of the Act; that the Act provided a complete code governing collective bargaining in Ontario; that the Act provided for interest arbitration only in the circumstances set out in section 40(1); and that any provision for interest arbitration in a collective agreement is not authorized by the Act, and is accordingly unenforceable – First, the Board advised that Article 15.1 did not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act – In order to engage section 40(1), parties must give notice to bargain and then have to agree in writing to refer all matters remaining in dispute between them to an arbitrator – Thus, there was no impediment to the Minister appointing a conciliation officer – Second, the Board advised that courts do not consider the Act as a complete code such that a collective agreement cannot include a dispute resolution mechanism other than those in the Act – Instead, the courts have found that the parties can agree to, or an interest arbitrator can order, the inclusion of an interest arbitration provision for the resolution of outstanding bargaining issues – Once a party has agreed to a dispute resolution mechanism, it cannot renege from that agreement, except perhaps on agreement or in the most extraordinary of circumstances – In this case, Article 15.1 would appear to be binding because the City agreed to it and it had not been removed through bargaining or by an interest arbitrator – Further, Article 15.1 did not affect the Minister's power to appoint a conciliation officer pursuant to section 18 of the Act – The Minister had the power to appoint an interest arbitrator when the parties failed to agree on one and nothing in Article 15.1 limited the Minister's authority in this regard – As such, where there has not been an agreement on a single arbitrator, and where the parties had agreed that either party could ask the Minister to make such an appointment, the Board advised the Minister that she had the power under the Act to appoint an interest arbitrator – Advice given to the Minister

THE CITY OF HAMILTON; RE CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 1041

880

Construction Industry – Bargaining Unit – Certification – Practice and Procedure

Termination – The applicants sought certification pursuant to section 158(2) of the Act to represent bargaining units of construction labourers and operating engineers in specified Board Areas for all sectors of the construction industry other than ICI – The applicants were attempting to displace the intervenor, who held bargaining rights for all employees, including construction labourers and operating engineers, employed by the responding party – The issue was the appropriate bargaining unit – The applicants argued that, despite their application to “carve out” a subset of the intervenor's bargaining rights, the bargaining unit was deemed appropriate under section 158(2) and the Board was not required to find the *most appropriate* bargaining unit – The responding party and the intervenor argued that the applicants in such a displacement application must take the bargaining unit as they find it, submitting that the Board's approach to bargaining unit descriptions in a displacement application was an exception to section 158(2) – The Board held that the applicants must adduce their evidence first, since they knew on what facts they wanted to rely in order to show why the Board should depart from its displacement policy – With respect to the merits, the Board found that the applicants' bargaining unit was deemed to be appropriate under section 158(2) and that the applicants were entitled to “carve out” the proposed bargaining unit – The applications raised two distinct Board policies that might appear in conflict: the first is that the Board seeks to determine whether the applicant's proposed bargaining unit is appropriate, rather than attempting to determine the most appropriate bargaining unit; the second is that the Board in a displacement application normally finds the existing bargaining unit to be the

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802

Construction Industry – Certification – Employer – One issue before the Board was whether four individuals were employees of the responding party – The Board reviewed the *York Condominium* "true employer" factors, and found that the SCC's more comprehensive test, with its non-exhaustive list, set out in *Pointe-Claire (City)* better enabled the Board to determine which party exercises the most control over all aspects of the work of the employees in question – The Board found the individuals were integrated more thoroughly into the operations of B.M. Metals than AMI, and that although a third connected business assigned some specific work to these individuals, B.M. Metals hired them to service a contract with Vale and they were only "rented" until needed – The two individuals were fundamentally part of the B.M. Metals organization and under the ultimate direction and control of B.M. Metals and accordingly employed by them – Certificates granted

B.M. METAL SERVICES INC.; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA

782

Construction Industry Grievance – Damages – The Board in an earlier proceeding found the responding party had violated the subcontracting provision of its collective agreement with the applicant – The responding party subcontracted to Protectron through a purchase order which contained the express provision that Protectron was to "provide unionized labour only" – Protectron began the work using non-union labour, and the responding party took back the work and instead performed it with its direct, unionized employees – Protectron, disapproving of the responding party's response, went directly to the Hospital to obtain the work – Protectron was successful and the Hospital deleted the electrical security systems work from the responding party's contract – The issue in this phase of the grievance was the quantification of the applicant's damages, if any – The Board found the applicant was not entitled to any damages from the responding party because the subcontract to Protectron was not the cause of the applicant's loss – The Board held it will look to see whether the damages arose so necessarily and directly from the employer's breach that it was necessary to grant compensation – More specifically, the Board will award damages for a subcontracting violation where the subject employer had control of the work, but it will not award damages where the employer does not – In these circumstances, the applicant's loss arose from an independent event, namely Protectron's intervention to the Hospital, and not from the responding party's violation of the collective agreement – Indeed, the responding party no longer had any control over the electrical security systems work when that work was performed on a non-union basis – Applicant's request for damages dismissed C & M

C & M ELECTRIC LTD.; RE INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 586

796

Construction Industry Grievance – The IBEW grieved the assignment of electrical lighting upgrade work to a non-union contractor, arguing that the work at issue was construction and not maintenance – The Board considered the reasons for the work: (1) to save energy, as well as energy and maintenance costs; (2) to reduce inventory; (3) to comply with recent government regulations and industry standards; and (4) to obtain rebates and incentives for energy savings – The Board distinguished the recent ruling in *Electro Instal* and found that the wholesale replacement of a considerable number of components and fixtures, as well as the addition of new reflectors, produced an “alteration” of the lighting system to bring the work within the definition of construction – The system can now create the same amount of illumination using half the energy, and can operate twice as long for the same amount of electricity – Grievance allowed

JOHNSON CONTROLS LTD.; RE INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1687

820

Damages – Construction Industry Grievance – The Board in an earlier proceeding found the responding party had violated the subcontracting provision of its collective agreement with the applicant – The responding party subcontracted to Protectron through a purchase order which contained the express provision that Protectron was to “provide unionized labour only” – Protectron began the work using non-union labour, and the responding party took back the work and instead performed it with its direct, unionized employees – Protectron, disapproving of the responding party’s response, went directly to the Hospital to obtain the work – Protectron was successful and the Hospital deleted the electrical security systems work from the responding party’s contract – The issue in this phase of the grievance was the quantification of the applicant’s damages, if any – The Board found the applicant was not entitled to any damages from the responding party because the subcontract to Protectron was not the cause of the applicant’s loss – The Board held it will look to see whether the damages arose so necessarily and directly from the employer’s breach that it was necessary to grant compensation – More specifically, the Board will award damages for a subcontracting violation where the subject employer had control of the work, but it will not award damages where the employer does not – In these circumstances, the applicant’s loss arose from an independent event, namely Protectron’s intervention to the Hospital, and not from the responding party’s violation of the collective agreement – Indeed, the responding party no longer had any control over the electrical security systems work when that work was performed on a non-union basis – Applicant’s request for damages dismissed C & M

C & M ELECTRIC LTD.; RE INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 586

796

Discharge – Employment Standards – Wilful Misconduct – The employer sought review of an order to pay termination pay and unpaid wages to a former employee who worked and lived on the employer’s farm as a labourer – The employee had signed an agreement to pay any hydro costs in excess of \$100 per month while residing on the employer’s farm and to have such an amount deducted from his pay – As required by Section 13(5) of the ESA, the authorization provided a formula from which a specific amount could be calculated – The deduction from wages was upheld but the amount was varied – On the termination issue, the Board found the employee had engaged in wilful misconduct by being rough with the employer’s cows and destructive to the farming equipment and machinery – In addition, the employee was abusive to the employer’s spouse – The

Board stated that the test was whether the behaviour was so egregious that the employer could not be expected to permit the employee to work during the notice period; in other words, was the employee's presence in the workplace during the notice period "untenable"? – The Board found the employee's aggressive and inappropriate conduct on the farm made it unreasonable to have expected the Employer to permit him to work out his notice period – The employee was not entitled to termination pay – Order to Pay varied

MAPLEHURST FARMS LIMITED O/A MAPLEHURST FARMS; RE KEVIN SAYEAU; RE DIRECTOR OF EMPLOYMENT STANDARDS

831

Duty of Fair Representation – Apprehension of Bias – Judicial Review – The Applicant sought judicial review of a decision of the OLRB which dismissed the Applicant's complaint that the Algoma University Faculty Association had breached its duty of fair representation. The Board found that the Association properly evaluated the circumstances of the Applicant's grievances, and did not breach its duty of fair representation in responding to those complaints – The Court accepted that the standard of review for the Board's decision was reasonableness, and found that the Board's dismissal of the application was reasonable – The Board was not required to hold an oral hearing – It was the Applicant's responsibility to present the necessary facts to the Board in the complaint or reply – The Applicant alleged that the Board lacked impartiality, however, the fact that the Vice-Chair of the Board had decided another application of the Applicant did not demonstrate any partiality – The Court found no evidence that the Board failed to respect the language rights of the Applicant – Application dismissed.

RENÉ GAGNÉ; RE THE ONTARIO LABOUR RELATIONS BOARD; RE ALGOMA UNIVERSITY FACULTY ASSOCIATION

919

Employee – Judicial Review – The Board decision found that Human Resources Secretaries working for the applicant School Board were not employed in a confidential capacity in matters relating to labour relations nor exercising managerial functions and were therefore employees for the purposes of the Act – The Court found that the standard of review was reasonableness (the Board was interpreting its home statute and applying it to the evidence), and it was a fact-driven exercise lying within the Board's expertise – The Court found that the Board reasonably concluded that the test for exclusion relating to labour relations matters requires a demonstration that the employee's work relates to matters affecting a union representing him or her and that it was reasonable for the Board to identify the mischief to which the legislation was directed as a conflict of loyalty – The Court found the Board's interpretation of s 1(3)(b) to be reasonable and its application of this interpretation to the facts was consistent with the Board's jurisprudence and fully supported by the evidence before it – Concerning the managerial exemption the Board applied its longstanding test, and found consistent with the evidence that the secretaries did not make "effective recommendations" – The reasons, having met the test of transparency, intelligibility and justification, were reasonable – Application for judicial review dismissed.

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1348; RE ONTARIO LABOUR RELATIONS BOARD

917

Employee – Employment Standards – Status – The applicant sought review of the Officer's refusal to issue an order to pay unpaid wages, having found the applicant was not an employee, but an independent contractor within the meaning of the Act – Although the

applicant had not signed a standard form contract which would have declared him to be an independent contractor, that fact was not dispositive of the issue – Rather, the Board found there were seven factors in the particular circumstances of this case that supported a finding the applicant was in business on his own account and was thus an independent contractor: (1) he retained significant independence; (2) he provided his own vehicle, which was the most fundamental “tool” as a pizza delivery driver, and he was responsible for all its expenses; (3) he was not required to work any particular shift; (4) supervision of how he worked was minimal to non-existent; (5) the distribution of shifts and orders was almost entirely left to the drivers to sort out; (6) he chose the routes to particular customers’ homes, and did not necessarily follow the route recommended by the employer; and (7) there were no restrictions concerning his ability to work for anyone else – Application dismissed

6701141 CANADA LTD. OPERATING AS PIZZA HUT; RE TOMAS NASSAB; RE DIRECTOR OF EMPLOYMENT STANDARDS.....

768

Employer – Certification – Construction Industry – One issue before the Board was whether four individuals were employees of the responding party – The Board reviewed the *York Condominium* “true employer” factors, and found that the SCC’s more comprehensive test, with its non-exhaustive list, set out in *Pointe-Claire (City)* better enabled the Board to determine which party exercises the most control over all aspects of the work of the employees in question – The Board found the individuals were integrated more thoroughly into the operations of B.M. Metals than AMI, and that although a third connected business assigned some specific work to these individuals, B.M. Metals hired them to service a contract with Vale and they were only “rented” until needed – The two individuals were fundamentally part of the B.M. Metals organization and under the ultimate direction and control of B.M. Metals and accordingly employed by them – Certificates granted

B.M. METAL SERVICES INC.; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA.....

782

Employer – Interim Order – LIUNA 183 sought an interim order for the payment of wages to four workers, pending the resolution of a certification application and unfair labour practice complaint – The four workers, originally employed by Maximum at a worksite operated by BDC through a contracting arrangement between the companies, were discharged by BDC following LIUNA 183’s application for certification for a bargaining unit of BDC employees – BDC subsequently asked for the workers to be reinstated, and for the original employment arrangements to be resumed – Maximum did not notify the employees, but the union was able to have them returned to work – BDC attempted to pay the employees by forwarding a cheque to Maximum (per the original contract) – Maximum refused to pay the employees – The Board found that neither responding party offered valid or even plausible explanations for the non-payment to the workers – Furthermore, the interim order was clearly brought within the context of an organizing campaign and the identity of the proper payor was a serious issue to be tried – The irreparable harm to the workers was patently obvious, and the failure to pay the workers appeared to be directly related to their exercise of rights under the Act – The responding parties were ordered to pay the workers their wages owing, as well as all future earnings until their employment is terminated – Interim Relief granted

BDC BULL DOZER CONSTRUCTION LTD. AND MAXIMUM CONSTRUCTION SERVICES; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183

773

Employment Standards – Discharge – Wilful Misconduct – The employer sought review of an order to pay termination pay and unpaid wages to a former employee who worked and lived on the employer's farm as a labourer – The employee had signed an agreement to pay any hydro costs in excess of \$100 per month while residing on the employer's farm and to have such an amount deducted from his pay – As required by Section 13(5) of the ESA, the authorization provided a formula from which a specific amount could be calculated – The deduction from wages was upheld but the amount was varied – On the termination issue, the Board found the employee had engaged in wilful misconduct by being rough with the employer's cows and destructive to the farming equipment and machinery – In addition, the employee was abusive to the employer's spouse – The Board stated that the test was whether the behaviour was so egregious that the employer could not be expected to permit the employee to work during the notice period; in other words, was the employee's presence in the workplace during the notice period "untenable"? – The Board found the employee's aggressive and inappropriate conduct on the farm made it unreasonable to have expected the Employer to permit him to work out his notice period – The employee was not entitled to termination pay – Order to Pay varied

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831

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6701141 CANADA LTD. OPERATING AS PIZZA HUT; RE TOMAS NASSAB; RE DIRECTOR OF EMPLOYMENT STANDARDS

768

Employment Standards – Judicial Review – The applicant sought judicial review of a Board decision in which the Board dismissed an application for review of an order to pay outstanding wages and vacation pay pursuant to the directors' liability provisions of the ESA – As a result of the applicant's failure to appear at the hearing, the Board treated his application as abandoned and confirmed the order to pay as made against him – At the judicial review hearing, the applicant argued he was denied procedural fairness because he was not able to address the amounts owing – He also argued the Board made mathematical errors in calculating the sum he was ordered to pay – The standard of review when the Board is interpreting the ESA is reasonableness – The Divisional Court

found there was no procedural unfairness – Despite the applicant's effort to characterize the Board's actions as a denial of procedural fairness, he was in substance attacking the merits of the Board's decision to dismiss his application for review as abandoned – The Board's Rules of Procedure provide that where a person has received written notice of a hearing and fails to attend, the Board may decide an application without further notice to the person and without considering any documentation that the person may file at a later date – The applicant did not request an adjournment from the Board and the evidence showed that he knew how to contact the Board – In the circumstances, the Board reasonably proceeded in the applicant's absence – Application for judicial review dismissed

RICHARD HOTTA, A DIRECTOR OF PROTEUS CRAFTWORKS INC.; RE
MAHAMMAD BADIUZZAMAN ET AL; RE ONTARIO LABOUR RELATIONS
BOARD

923

Employment Standards – Judicial Review – The applicant sought judicial review of a Board decision dismissing his appeal as untimely (six months after the order to pay was served) – The applicant had faxed a request to the Director of Employment Standards, rather than the Board, within 30 days advising he wished to file an appeal – The Court dismissed the claim that there was a breach of natural justice based on systemic bias, as there was no evidence on the record to support such a claim – The Court found the Board's decision that the appeal was untimely to be reasonable – The applicant had failed to file a timely application for review and failed to provide a reasonable explanation for his failure to do so, and the Board's application of these factors was reasonable – Application dismissed.

SHAH ISLAM; RE J. ENNIS FABRICS LTD.; RE DIRECTOR OF EMPLOYMENT
STANDARDS; RE ONTARIO LABOUR RELATIONS BOARD

925

Employment Standards – The Board dismissed the employee's application for review in which she sought amounts that were beyond those to which she was entitled under the ESA – The employer then sought costs after it prepared for a hearing in which it was entirely successful in a matter for which the employee had no prospect of success – The employer also made the necessary yet costly arrangements to appear after the employee refused to consent to an adjournment – The Board held it could not award costs because it did not have any legislative authority to do so – The ESA does not provide the Board with any authority to award costs, and although the SPPA provides this authority to tribunals where they have made specific Rules, the Board has not made any Rules related to costs – There are sound policy reasons for not awarding costs – The ESA is not meant to punish or deter an individual, who is often self-represented, unsophisticated, or vulnerable, from using the mechanisms provided for in the ESA – Further, any authority to award costs would most likely result in an increase in litigation – Accordingly, the employer's request was dismissed – Application for review dismissed.

S. WILSON & CO. BAILIFFS LIMITED; RE GILDA DEL CASTILLO; RE
DIRECTOR OF EMPLOYMENT STANDARDS

906

Interest Arbitration – Collective Agreement – Reference – The Minister of Labour referred a number of questions to the Board for its advice pursuant to section 115 of the Act – The Union gave the City notice to bargain for renewal of the expired collective agreement – The Union advised the City that it would rely on Article 15.1 of the collective agreement to submit remaining matters in dispute to arbitration if bargaining was unsuccessful – Article 15.1 stated that if, after bargaining in good faith for the agreement's renewal, either party may notify the other party in writing of its desire to submit the matters in

dispute to arbitration if it becomes satisfied that an agreement cannot be reached – Further, Article 15.1 provided that the Minister must appoint a single arbitrator upon the request of either party if the parties cannot agree to an arbitrator within fourteen days – The City argued that Article 15.1 was not an agreement of the parties as required by section 40(1) of the Act; that the Act provided a complete code governing collective bargaining in Ontario; that the Act provided for interest arbitration only in the circumstances set out in section 40(1); and that any provision for interest arbitration in a collective agreement is not authorized by the Act, and is accordingly unenforceable – First, the Board advised that Article 15.1 did not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act – In order to engage section 40(1), parties must give notice to bargain and then have to agree in writing to refer all matters remaining in dispute between them to an arbitrator – Thus, there was no impediment to the Minister appointing a conciliation officer – Second, the Board advised that courts do not consider the Act as a complete code such that a collective agreement cannot include a dispute resolution mechanism other than those in the Act – Instead, the courts have found that the parties can agree to, or an interest arbitrator can order, the inclusion of an interest arbitration provision for the resolution of outstanding bargaining issues – Once a party has agreed to a dispute resolution mechanism, it cannot resile from that agreement, except perhaps on agreement or in the most extraordinary of circumstances – In this case, Article 15.1 would appear to be binding because the City agreed to it and it had not been removed through bargaining or by an interest arbitrator – Further, Article 15.1 did not affect the Minister's power to appoint a conciliation officer pursuant to section 18 of the Act – The Minister had the power to appoint an interest arbitrator when the parties failed to agree on one and nothing in Article 15.1 limited the Minister's authority in this regard – As such, where there has not been an agreement on a single arbitrator, and where the parties had agreed that either party could ask the Minister to make such an appointment, the Board advised the Minister that she had the power under the Act to appoint an interest arbitrator – Advice given to the Minister

THE CITY OF HAMILTON; RE CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 1041

880

Interim Order – Employer - LIUNA 183 sought an interim order for the payment of wages to four workers, pending the resolution of a certification application and unfair labour practice complaint – The four workers, originally employed by Maximum at a worksite operated by BDC through a contracting arrangement between the companies, were discharged by BDC following LIUNA 183's application for certification for a bargaining unit of BDC employees – BDC subsequently asked for the workers to be reinstated, and for the original employment arrangements to be resumed – Maximum did not notify the employees, but the union was able to have them returned to work – BDC attempted to pay the employees by forwarding a cheque to Maximum (per the original contract) – Maximum refused to pay the employees – The Board found that neither responding party offered valid or even plausible explanations for the non-payment to the workers – Furthermore, the interim order was clearly brought within the context of an organizing campaign and the identity of the proper payor was a serious issue to be tried – The irreparable harm to the workers was patently obvious, and the failure to pay the workers appeared to be directly related to their exercise of rights under the Act – The responding parties were ordered to pay the workers their wages owing, as well as all future earnings until their employment is terminated – Interim Relief granted

BDC BULL DOZER CONSTRUCTION LTD. AND MAXIMUM CONSTRUCTION
SERVICES; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 183

773

Judicial Review – Duty of Fair Representation – Apprehension of Bias – The Applicant sought judicial review of a decision of the OLRB which dismissed the Applicant's complaint that the Algoma University Faculty Association had breached its duty of fair representation – The Board found that the Association properly evaluated the circumstances of the Applicant's grievances, and did not breach its duty of fair representation in responding to those complaints – The Court accepted that the standard of review for the Board's decision was reasonableness, and found that the Board's dismissal of the application was reasonable – The Board was not required to hold an oral hearing – It was the Applicant's responsibility to present the necessary facts to the Board in the complaint or reply – The Applicant alleged that the Board lacked impartiality, however, the fact that the Vice-Chair of the Board had decided another application of the Applicant did not demonstrate any partiality – The Court found no evidence that the Board failed to respect the language rights of the Applicant – Application dismissed.

RENÉ GAGNÉ; RE THE ONTARIO LABOUR RELATIONS BOARD; RE ALGOMA UNIVERSITY FACULTY ASSOCIATION

919

Judicial Review – Employee – The Board decision found that Human Resources Secretaries working for the applicant School Board were not employed in a confidential capacity in matters relating to labour relations nor exercising managerial functions and were therefore employees for the purposes of the Act – The Court found that the standard of review was reasonableness (the Board was interpreting its home statute and applying it to the evidence), and it was a fact-driven exercise lying within the Board's expertise – The Court found that the Board reasonably concluded that the test for exclusion relating to labour relations matters requires a demonstration that the employee's work relates to matters affecting a union representing him or her and that it was reasonable for the Board to identify the mischief to which the legislation was directed as a conflict of loyalty – The Court found the Board's interpretation of s. 1(3)(b) to be reasonable and its application of this interpretation to the facts was consistent with the Board's jurisprudence and fully supported by the evidence before it – Concerning the managerial exemption the Board applied its longstanding test, and found consistent with the evidence that the secretaries did not make "effective recommendations" – The reasons, having met the test of transparency, intelligibility and justification, were reasonable – Application for judicial review dismissed.

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1348; RE ONTARIO LABOUR RELATIONS BOARD

917

Judicial Review – Employment Standards – The applicant sought judicial review of a Board decision in which the Board dismissed an application for review of an order to pay outstanding wages and vacation pay pursuant to the directors' liability provisions of the ESA – As a result of the applicant's failure to appear at the hearing, the Board treated his application as abandoned and confirmed the order to pay as made against him – At the judicial review hearing, the applicant argued he was denied procedural fairness because he was not able to address the amounts owing – He also argued the Board made mathematical errors in calculating the sum he was ordered to pay – The standard of review when the Board is interpreting the ESA is reasonableness – The Divisional Court found there was no procedural unfairness – Despite the applicant's effort to characterize the Board's actions as a denial of procedural fairness, he was in substance attacking the merits of the Board's decision to dismiss his application for review as abandoned – The Board's Rules of Procedure provide that where a person has received written notice of a hearing and fails to attend, the Board may decide an application without further notice to

the person and without considering any documentation that the person may file at a later date – The applicant did not request an adjournment from the Board and the evidence showed that he knew how to contact the Board – In the circumstances, the Board reasonably proceeded in the applicant's absence – Application for judicial review dismissed

RICHARD HOTTA, A DIRECTOR OF PROTEUS CRAFTWORKS INC.; RE
MAHAMMAD BADIUZZAMAN ET AL; RE ONTARIO LABOUR RELATIONS
BOARD 923

Judicial Review – Employment Standards – The applicant sought judicial review of a Board decision dismissing his appeal as untimely (six months after the order to pay was served) – The applicant had faxed a request to the Director of Employment Standards, rather than the Board, within 30 days advising he wished to file an appeal – The Court dismissed the claim that there was a breach of natural justice based on systemic bias, as there was no evidence on the record to support such a claim – The Court found the Board's decision that the appeal was untimely to be reasonable – The applicant had failed to file a timely application for review and failed to provide a reasonable explanation for his failure to do so, and the Board's application of these factors was reasonable – Application dismissed.

SHAH ISLAM; RE J. ENNIS FABRICS LTD.; RE DIRECTOR OF EMPLOYMENT
STANDARDS; RE ONTARIO LABOUR RELATIONS BOARD 925

Judicial Review – Sale of Business – The Board's decision found there was a sale of business based on an individual being a "key individual" in both the predecessor and new company – The parties agreed the standard of review was reasonableness – The Court found the Board identified the evidence it relied upon for its findings of fact and the line of reasoning that led from these findings of fact to its conclusion – The Court also found the Board's decision made it clear why it reached the conclusion it did and that it was within a range of reasonable outcomes – Accordingly the *Dunsmuir* test was satisfied – Application dismissed.

ALLIANCE ENVIRONMENTAL AND ABATEMENT CONTRACTORS INC.; RE
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES LOCAL 1891;
RE ONTARIO LABOUR RELATIONS BOARD 914

Practice and Procedure – Bargaining Unit – Certification – Construction Industry – Termination – The applicants sought certification pursuant to section 158(2) of the Act to represent bargaining units of construction labourers and operating engineers in specified Board Areas for all sectors of the construction industry other than ICI – The applicants were attempting to displace the intervenor, who held bargaining rights for all employees, including construction labourers and operating engineers, employed by the responding party – The issue was the appropriate bargaining unit – The applicants argued that, despite their application to "carve out" a subset of the intervenor's bargaining rights, the bargaining unit was deemed appropriate under section 158(2) and the Board was not required to find the *most appropriate* bargaining unit – The responding party and the intervenor argued that the applicants in such a displacement application must take the bargaining unit as they find it, submitting that the Board's approach to bargaining unit descriptions in a displacement application was an exception to section 158(2) – The Board held that the applicants must adduce their evidence first, since they knew on what facts they wanted to rely in order to show why the Board should depart from its displacement policy – With respect to the merits, the Board found that the applicants' bargaining unit was deemed to be appropriate under section 158(2) and that the

applicants were entitled to "carve out" the proposed bargaining unit – The applications raised two distinct Board policies that might appear in conflict: the first is that the Board seeks to determine whether the applicant's proposed bargaining unit is appropriate, rather than attempting to determine the most appropriate bargaining unit; the second is that the Board in a displacement application normally finds the existing bargaining unit to be the appropriate unit – The Board found that those two policies were not inconsistent – Rather, the Board's approach in a displacement application was an *exception* to its usual practice of accepting the applicant's proposed bargaining unit, if appropriate, even if it was not the most appropriate bargaining unit – In these circumstances, the Board's displacement policy did not preclude the applicants from seeking to represent the employees in the bargaining units that they proposed – Matter continues.

EXPERCOM TELECOMMUNICATIONS INC.; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; RE PORT PERRY EMPLOYEES ASSOCIATION

802

Reconsideration – Certification Where Act Contravened – Remedies – Termination – The Board finds that a trade union seeking to rely on s. 11 relief predicated upon a contravention of the Act must at least file and deliver an application for certification if it expects to obtain a representation vote or remedial certification – Consistent with the scheme of the Act, the remedies available to the Board in subsection 11(2) are only available in circumstances where there is an application for certification – Matter continues

TOK TRANSIT LIMITED; RE TOK TRANSIT LIMITED, THE REGIONAL MUNICIPALITY OF YORK AND BILL FISCH; RE UNITED FOOD & COMMERCIAL WORKERS, LOCAL 206; RE AMALGAMATED TRANSIT UNION, LOCAL 113.....

909

Reference – Collective Agreement – Interest Arbitration – The Minister of Labour referred a number of questions to the Board for its advice pursuant to section 115 of the Act – The Union gave the City notice to bargain for renewal of the expired collective agreement – The Union advised the City that it would rely on Article 15.1 of the collective agreement to submit remaining matters in dispute to arbitration if bargaining was unsuccessful – Article 15.1 stated that if, after bargaining in good faith for the agreement's renewal, either party may notify the other party in writing of its desire to submit the matters in dispute to arbitration if it becomes satisfied that an agreement cannot be reached – Further, Article 15.1 provided that the Minister must appoint a single arbitrator upon the request of either party if the parties cannot agree to an arbitrator within fourteen days – The City argued that Article 15.1 was not an agreement of the parties as required by section 40(1) of the Act; that the Act provided a complete code governing collective bargaining in Ontario; that the Act provided for interest arbitration only in the circumstances set out in section 40(1); and that any provision for interest arbitration in a collective agreement is not authorized by the Act, and is accordingly unenforceable – First, the Board advised that Article 15.1 did not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act – In order to engage section 40(1), parties must give notice to bargain and then have to agree in writing to refer all matters remaining in dispute between them to an arbitrator – Thus, there was no impediment to the Minister appointing a conciliation officer – Second, the Board advised that courts do not consider the Act as a complete code such that a collective agreement cannot include a dispute resolution mechanism other than those in the Act – Instead, the courts have found that the parties can agree to, or an interest arbitrator can order, the inclusion of an interest

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THE CITY OF HAMILTON; RE CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 1041.....

880

Remedies – Certification Where Act Contravened – Reconsideration – Termination – The Board finds that a trade union seeking to rely on s. 11 relief predicated upon a contravention of the Act must at least file and deliver an application for certification if it expects to obtain a representation vote or remedial certification – Consistent with the scheme of the Act, the remedies available to the Board in subsection 11(2) are only available in circumstances where there is an application for certification – Matter continues

TOK TRANSIT LIMITED; RE TOK TRANSIT LIMITED, THE REGIONAL
MUNICIPALITY OF YORK AND BILL FISCH; RE UNITED FOOD &
COMMERCIAL WORKERS, LOCAL 206; RE AMALGAMATED TRANSIT UNION,
LOCAL 113.....

909

Sale of Business – Judicial Review – The Board's decision found there was a sale of business based on an individual being a "key individual" in both the predecessor and new company – The parties agreed the standard of review was reasonableness – The Court found the Board identified the evidence it relied upon for its findings of fact and the line of reasoning that led from these findings of fact to its conclusion – The Court also found the Board's decision made it clear why it reached the conclusion it did and that it was within a range of reasonable outcomes – Accordingly the *Dunsmuir* test was satisfied – Application dismissed.

ALLIANCE ENVIRONMENTAL AND ABATEMENT CONTRACTORS INC.; RE
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES LOCAL 1891;
RE ONTARIO LABOUR RELATIONS BOARD.....

914

Status – Employment Standards – Employee – The applicant sought review of the Officer's refusal to issue an order to pay unpaid wages, having found the applicant was not an employee, but an independent contractor within the meaning of the Act – Although the applicant had not signed a standard form contract which would have declared him to be an independent contractor, that fact was not dispositive of the issue – Rather, the Board found there were seven factors in the particular circumstances of this case that supported a finding the applicant was in business on his own account and was thus an independent contractor: (1) he retained significant independence; (2) he provided his own vehicle, which was the most fundamental "tool" as a pizza delivery driver, and he was responsible for all its expenses; (3) he was not required to work any particular shift; (4) supervision of how he worked was minimal to non-existent; (5) the distribution of shifts and orders was almost entirely left to the drivers to sort out; (6) he chose the routes to particular

customers' homes, and did not necessarily follow the route recommended by the employer; and (7) there were no restrictions concerning his ability to work for anyone else – Application dismissed

6701141 CANADA LTD. OPERATING AS PIZZA HUT; RE TOMAS NASSAB; RE DIRECTOR OF EMPLOYMENT STANDARDS.....

768

Termination – Bargaining Unit – Certification – Construction Industry – Practice and Procedure – The applicants sought certification pursuant to section 158(2) of the Act to represent bargaining units of construction labourers and operating engineers in specified Board Areas for all sectors of the construction industry other than ICI – The applicants were attempting to displace the intervenor, who held bargaining rights for all employees, including construction labourers and operating engineers, employed by the responding party – The issue was the appropriate bargaining unit – The applicants argued that, despite their application to “carve out” a subset of the intervenor’s bargaining rights, the bargaining unit was deemed appropriate under section 158(2) and the Board was not required to find the *most appropriate* bargaining unit – The responding party and the intervenor argued that the applicants in such a displacement application must take the bargaining unit as they find it, submitting that the Board’s approach to bargaining unit descriptions in a displacement application was an exception to section 158(2) – The Board held that the applicants must adduce their evidence first, since they knew on what facts they wanted to rely in order to show why the Board should depart from its displacement policy – With respect to the merits, the Board found that the applicants’ bargaining unit was deemed to be appropriate under section 158(2) and that the applicants were entitled to “carve out” the proposed bargaining unit – The applications raised two distinct Board policies that might appear in conflict: the first is that the Board seeks to determine whether the applicant’s proposed bargaining unit is appropriate, rather than attempting to determine the most appropriate bargaining unit; the second is that the Board in a displacement application normally finds the existing bargaining unit to be the appropriate unit – The Board found that those two policies were not inconsistent – Rather, the Board’s approach in a displacement application was an *exception* to its usual practice of accepting the applicant’s proposed bargaining unit, if appropriate, even if it was not the most appropriate bargaining unit – In these circumstances, the Board’s displacement policy did not preclude the applicants from seeking to represent the employees in the bargaining units that they proposed – Matter continues.

EXPERCOM TELECOMMUNICATIONS INC.; RE LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247; RE LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; RE PORT PERRY EMPLOYEES ASSOCIATION

802

Termination – Certification Where Act Contravened – Reconsideration – Remedies – The Board finds that a trade union seeking to rely on s. 11 relief predicated upon a contravention of the Act must at least file and deliver an application for certification if it expects to obtain a representation vote or remedial certification – Consistent with the scheme of the Act, the remedies available to the Board in subsection 11(2) are only available in circumstances where there is an application for certification – Matter continues

TOK TRANSIT LIMITED; RE TOK TRANSIT LIMITED, THE REGIONAL MUNICIPALITY OF YORK AND BILL FISCH; RE UNITED FOOD & COMMERCIAL WORKERS, LOCAL 206; RE AMALGAMATED TRANSIT UNION, LOCAL 113.....

909

Unfair Labour Practice – Certification – UNITE HERE complained that Novotel had interfered with its organizing campaign in four ways: (1) departmental “roundtable discussions” amounted to captive audience meetings during which the employer made threats to the employees’ job security; (2) the virtual lay-off of the union’s main organizer was meant to send a message to employees; (3) Novotel’s practice of encouraging employees to report union activity amounted to surveillance and prevented employees from expressing their true wishes about the union at the vote; and (4) Novotel’s provision of false or misleading information to employees equally precluded the employees from revealing their true wishes at the vote - The Board heard no direct evidence that Novotel directed, asked or encouraged employees to inform on their co-workers; management listened to the reports and kept track of them, but there was no evidence that employees knew of the information gathering - The Board found that Novotel generated false or misleading information regarding the employees’ ability to retain their family doctors, or their ability to continue participating in the hotel’s RRSP programs; although there was ample time between the dissemination of this information and the representation vote for the union to correct the misinformation, the union failed to do so; nonetheless, Novotel’s conduct violated the Act - The employer’s witnesses gave conflicting testimony regarding the diminution of the organizer’s hours, and the concomitant creation of two full-time positions, neither of which was offered to the more senior employee/organizer - The Board found it was patently evident to all Novotel staff that the employee at issue was the chief organizer - Novotel was unable to persuade the Board that its conduct with respect to this employee, and the shift creation/changes was free of anti-union animus - Finally, the Board found that the employer’s various discussions of job security, taken individually, might not cross the lines of free speech, but cumulatively constituted coercion, undue influence and interference - Remedial certification ordered Compensation for the discharged organizer, equivalent to her weekly hours of work, from her last day of work to the date of the decision

NOVOTEL CANADA INC.; RE UNITE HERE; RE ACCOR CANADA INC.; RE
NOVOTEL MISSISSAUGA O/A HOTEL NOVOTEL TORONTO MISSISSAUGA
CENTRE.....

836

Wilful Misconduct – Employment Standards – Discharge – The employer sought review of an order to pay termination pay and unpaid wages to a former employee who worked and lived on the employer’s farm as a labourer – The employee had signed an agreement to pay any hydro costs in excess of \$100 per month while residing on the employer’s farm and to have such an amount deducted from his pay – As required by Section 13(5) of the ESA, the authorization provided a formula from which a specific amount could be calculated – The deduction from wages was upheld but the amount was varied – On the termination issue, the Board found the employee had engaged in wilful misconduct by being rough with the employer’s cows and destructive to the farming equipment and machinery – In addition, the employee was abusive to the employer’s spouse – The Board stated that the test was whether the behaviour was so egregious that the employer could not be expected to permit the employee to work during the notice period; in other words, was the employee’s presence in the workplace during the notice period “untenable”? – The Board found the employee’s aggressive and inappropriate conduct on the farm made it unreasonable to have expected the Employer to permit him to work out his notice period – The employee was not entitled to termination pay – Order to Pay varied

MAPLEHURST FARMS LIMITED O/A MAPLEHURST FARMS; RE KEVIN
SAYEAU; RE DIRECTOR OF EMPLOYMENT STANDARDS

831



3590-11-ES Tomas Nassab, Applicant v. **6701141 Canada Ltd. Operating as Pizza Hut** and
Director of Employment Standards, Responding Parties

Employment Standards – Employee – Status – The applicant sought review of the Officer's refusal to issue an order to pay unpaid wages, having found the applicant was not an employee, but an independent contractor within the meaning of the Act – Although the applicant had not signed a standard form contract which would have declared him to be an independent contractor, that fact was not dispositive of the issue – Rather, the Board found there were seven factors in the particular circumstances of this case that supported a finding the applicant was in business on his own account and was thus an independent contractor: (1) he retained significant independence; (2) he provided his own vehicle, which was the most fundamental "tool" as a pizza delivery driver, and he was responsible for all its expenses; (3) he was not required to work any particular shift; (4) supervision of how he worked was minimal to non-existent; (5) the distribution of shifts and orders was almost entirely left to the drivers to sort out; (6) he chose the routes to particular customers' homes, and did not necessarily follow the route recommended by the employer; and (7) there were no restrictions concerning his ability to work for anyone else – Application dismissed

BEFORE: *James Hayes*, Vice-Chair.

DECISION OF THE BOARD: September 24, 2012

1. This is an application under section 116 of the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended (the "Act") brought by Tomas Nassab who seeks review of a decision of an Employment Standards Officer ("ESO"). The ESO rejected his assertion that he was an employee of the responding party and therefore entitled to the minimum wage prescribed by the Act. Nassab in this application makes a claim only for unpaid wages. He does not allege a breach of any other employment standard.

2. The style of cause is hereby amended on consent to reflect the correct name of the responding party which is 6701141 Canada Ltd. operating as Pizza Hut ("Pizza Hut"). The responding party is a franchisee.

3. The evidentiary record in this matter was less than ideal. Neither party was represented by counsel at the hearing of this matter. This decision should be read as limited to its particular facts.

4. The following factual description is taken from the testimony of Nassab and the owners of the franchise in question, Barry and Bryan Harris. The core facts were largely undisputed.

5. Nassab commenced work in April 2011 as a pizza delivery driver at Pizza Hut's Bell Farm location in Barrie. He was terminated following an incident which occurred on September 29, 2011.

6. Nassab was given training by another driver concerning procedures to be followed. The training consisted of being shown how to sign in to work with an identification number, how to use the Pizza Hut computer, how deliveries were assigned, how to use portable Interac terminals, and how to bag and package product for delivery.

7. In carrying out his work he used warming bags, uniforms and Interac terminals provided by Pizza Hut. Pizza Hut hats, shirts, and jackets were to be obtained at driver's expense.

8. Nassab was paid \$3.25 per delivery and retained all tips he received. No statutory deductions were made from monies received by him. The franchisee paid only premiums with respect to Workplace Safety and Insurance Board ("WSIB") requirements on his behalf. He was paid at the completion of any shift worked. A computer print out set out that compensation and the basis for it.

9. The distribution of shifts is accomplished by drivers working out any issues themselves. The Pizza Hut General Manager has not been required to settle any disputes. Drivers are expected to be reasonably available but there is no requirement that they be available for any particular shift. Any disputes concerning equitable distribution of orders are generally sorted out by the drivers themselves.

10. A document entitled "Contract for Delivery Services Addendum" was posted setting out the compensation structure for various shifts, some of which entailed a minimum guarantee, and identified shifts which were available to drivers.

11. Drivers provide their own vehicles and absorb all costs associated with the operation of those vehicles.

12. There are no restrictions whatsoever on their ability to take employment or contracted work with anyone other than Pizza Hut. They could choose, for example, to deliver pizza for Pizza Hut competitors.

13. Drivers are provided with suggested delivery routes but may decide themselves how to proceed to customer locations.

14. In early August 2011 Nassab was presented with a standard form Contract for Delivery Services but refused to sign it. He continued to work without signing the document. He states that he was not given a copy. That document represents that drivers provide services as independent contractors.

15. The business at the Bell Farm location is estimated to consist of 40% delivery and 60% carry out.

16. In *Global Courier & Messenger Services Ltd. v. Brar*, 2006 CanLII 10431 (ON LRB), the Board said the following:

4. The Board has recently had occasion to consider the distinction between an employee and an independent contractor. In *2006515 Ontario Inc. (c.o.b. Greco Health Shack)*, [2005] O.E.S.A.D. No. 34, the Board made the following observations, which I adopt:

34. The Act is deemed to be remedial, as are all statutes [sic: statutes], and is to receive "such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent and spirit": section 10 *Interpretation Act* R.S.O. 1990, c. I. 11.

35. In *Machtinger v. HOJ Industries Ltd.* [1992] 1 S.C.R. 986, the Supreme Court of Canada considered the purpose of the predecessor Employment Standards Act, and stated (at page 1003):

The harm which the Act seeks to remedy is that individual employees, and in particular non-unionized employees, are often in an unequal bargaining position in relation to their employers.

....

... Accordingly, an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not.

The current Act has the same purpose and is to be interpreted in a similar manner.

36. "Employee" is a defined term under section 1 of the Act. The definition is inclusive and includes "a person who performs any work for or supplies any services to any employer for wages". What ever else this may mean, an individual who is an "employee" within the meaning of the Act, and hence entitled to protections of the Act, at the very least includes those individuals who would be considered employees at common law.

37. The test to be applied in determining whether an individual is an employee or an independent contractor at common law was recently reviewed by the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.* [2001] 2 S.C.R. 983. The Court reviewed the various tests which have been articulated at common law over time: the "control test"; the "fourfold test"; and the "organization test" or "integration test". The Court noted the difficulties which have emerged from the application of each of these tests. Of note, with respect to the "organization test", the

Court referred favourably to the following statement by MacGuigan J.A. in *Wiebe Door Services Ltd. v. M.N.R.*, [1986] 3 F.C. 553:

Of course, the organization test of Lord Denning and others produces entirely acceptable results when properly applied, that is, when the question of organization or integration is approached from the persona of the "employee" and not from that of the "employer," because it is always too easy from the superior perspective of the larger enterprise to assume that every contributing cause is so arranged purely for the convenience of the larger entity. We must keep in mind that it was with respect to the business of the employee that Lord Wright [in *Montreal v. Montreal Locomotive Works Ltd.* [1947] 1 D.L.R. 161] addressed the question "Whose business is it?" [Emphasis added [by the Supreme Court of Canada].]

38. The Court concluded (at paragraph 46) that: "there is no conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor". The Court continued, however, as follows:

¶ 47 Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J. in *Market Investigations, supra* [*Market Investigations Ltd. v. Minister of Social Security* [1968] 3 All E.R. 732]. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.

¶ 48 It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.

39. Finally, it is important to note that whether or not an individual is an employee or an independent contractor is a question of law to be determined after consideration of all of the relevant factors. The intention of the parties is relevant only to the extent that it is reflected in the actual arrangements they have made with each other in structuring their relationship. Put another way, the parties cannot by their "agreement" render the relationship of an employee an independent

contractor or *vice versa*: see for example *Greypoint Properties Inc.*
[2000] OLRB Rep. May/June 479 at paragraph 15.

40.[sic] Having considered the facts recited above, not without some hesitation, I have decided that Nassar is an independent contractor and not an employee of Pizza Hut within the meaning of the Act.

41. On balance, the evidence supports a finding that the applicant was in business on his own account. When all of the circumstances are considered together, I find that Nassar retains significant independence which is not characteristic of an employee. He provides the most fundamental 'tool' of a pizza delivery driver, that is, a vehicle, and is responsible for all of the expenses related to its operation. He is not required to work any particular shift. Supervision of how he works is minimal to non-existent. The distribution of shifts and orders during shifts is largely, almost entirely, left to the drivers themselves to sort out. While routes to particular customers are suggested, drivers may make those choices themselves. There are no restrictions at all concerning Nassar's ability to work for anyone else, including a Pizza Hut competitor. In my view, these factors overcome other factual elements which might be said to suggest that he is an employee. I do not see the fact that he declined to sign the standard form Contract, which would have declared him to be an independent contractor, as being dispositive one way or the other.

42. The application is dismissed.

1625-12-M Labourers' International Union of North America, Local 183, Applicant v. BDC Bull Dozer Construction Ltd. and Maximum Construction Services, Responding Parties

Employer – Interim Order – LIUNA 183 sought an interim order for the payment of wages to four workers, pending the resolution of a certification application and unfair labour practice complaint – The four workers, originally employed by Maximum at a worksite operated by BDC through a contracting arrangement between the companies, were discharged by BDC following LIUNA 183's application for certification for a bargaining unit of BDC employees – BDC subsequently asked for the workers to be reinstated, and for the original employment arrangements to be resumed – Maximum did not notify the employees, but the union was able to have them returned to work – BDC attempted to pay the employees by forwarding a cheque to Maximum (per the original contract) – Maximum refused to pay the employees – The Board found that neither responding party offered valid or even plausible explanations for the non-payment to the workers – Furthermore, the interim order was clearly brought within the context of an organizing campaign and the identity of the proper payor was a serious issue to be tried – The irreparable harm to the workers was patently obvious, and the failure to pay the workers appeared to be directly related to their exercise of rights under the Act – The responding parties were ordered to pay the workers their wages owing, as well as all future earnings until their employment is terminated – Interim Relief granted

BEFORE: *David A. McKee*, Vice-Chair

APPEARANCES: *Eli Gedalof, Christine Davies, Harold St. Croix, Terry Longstaff, Chelsea Prince, Milton Powell, Charles Grossett and Dwayne Bell* appearing for the applicant; *Alan Freedman, Adrian Di Lullo, Ted Rohof and Bob Columbus* appearing for BDC Bull Dozer Construction Ltd.; *Tim Lawson, Ginel McLarty* appearing for Maximum Construction Services.

DECISION OF THE BOARD: September 6, 2012

1. This application is an application for an interim order made pursuant to section 98 of the *Labour Relations Act, 1995*, S.O. 1995 ch.1, as amended ("the Act"). This decision deals with the seemingly insurmountable task of transferring money from the pockets of a willing payor to the hands of four willing (and indeed anxious) payees who are quite indifferent as to who actually issues their cheque. We succeed in doing so.

2. Dwayne Bell, Charles Grossett, Milton Powell and Chelsea Prince are four construction workers ("the 4 Workers") who performed work on a project in Oakville Ontario. The work was on a contract for construction services entered into between the owner of the site and BDC Bull Dozer Construction Ltd. ("BDC Bull Dozer"). This decision deals with the period from August 7 to August 31, 2012. There is no dispute that the 4 Workers performed their work in an appropriate and diligent fashion, there is no dispute about their wage rate and there is no dispute that they are entitled to be paid. Why payment should be so difficult is best seen in the context of the events occurring before August 7, 2012.

3. BDC Bull Dozer is a company that is engaged in various types of construction on a number of projects in Ontario. It employs many persons directly to accomplish the tasks that it has undertaken to perform. There are also other persons, including the 4 Workers, who perform work on its site in respect of BDC Bull Dozer's contracts whom it does not employ directly. It contracted with Maximum Construction Services ("Maximum") to supply a number of construction labourers for BDC Bull Dozer's use on the Oakville site. As is typical of such arrangements, Maximum recruited and paid the 4 Workers based on hours submitted by BDC Bull Dozer. The fee paid to Maximum includes the wages of the employees, plus the "employer burden" representing employer contributions to EI, CPP and WSIB premiums as well as the profit and overhead component of Maximum's fee. At the hearing Maximum's counsel asserted that the 4 Workers also called in their hours. Otherwise Maximum had no day to day engagement with the workers. They received their instructions on where to work and what to do and how to do it from supervisors of BDC Bull Dozer.

4. On July 26, 2012, Labourers' International Union of North America, Local 183 ("the Union") made an application to represent a bargaining unit of construction labourers in the employ of BDC Bull Dozer. It asserted that there were 13 construction labourers in the bargaining unit. BDC Bull Dozer replied on July 31, 2012. It agreed with the bargaining unit description but asserted that there were 21 such persons. It also indicated that it employed carpenters and electricians. The list of construction labourers submitted with the response listed those 21 persons by name. The list did not include the 4 Workers. In response, on August 13, 2012, the Union asserted that 8 persons, including the 4 Workers, ought to be included in the bargaining unit. It asserts that BDC Bull Dozer is the "true employer" of the 4 Workers (and

perhaps all 8 of the persons identified) despite the fact that their paycheques come from Maximum.

5. On July 31, 2012, the Union alleged that the 4 Workers were discharged by BDC Bull Dozer. In an application filed on July 31, 2012 (Board File No. 1354-12-U), the Union asserted that:

BDC terminated Bell, Grossett, Powell and Prince shortly after being served with the certification application and being advised by another employee, Rick Blaker ("Blaker"), that they had signed union cards. There was no cause for the terminations, and in fact, Columbus specifically advised Powell that he was being terminated because of the "union thing" With respect to other terminated employees, the Employer either provided no reasons whatsoever for the terminations, or concocted an explanation that their services were "no longer required." However, contrary to this assertion, there continues to be work for these employees and the work is expected to last for at least two years. In fact, the very day that it was served with the certification application, the Employer hired four replacement workers to replace Bell, Grossett, Powell and Prince.

6. BDC Bull Dozer filed a response denying these allegations and asserted that it had decided on July 23, 2012 to terminate its contract with Maximum as of the end of that week (July 28, 2012) due to complaints about the quality of work on the site. It said that the 4 Workers had left on instructions from Maximum.

7. On the same date as the Union filed the unfair labour practice complaint, it sought interim relief against BDC Bull Dozer in a separate application. BDC Bull Dozer did not file a response but rather sent the Board a letter stating:

However, I would like to advise the Board that, without prejudice to any position that the Responding Party may take in Board File No. 1313-12-R and Board File No. 1354-12-U, the Responding Party has made a request to Maximum Construction Services that it return the four individuals who are the subject of the Application in Board File No. 1353-12-M to the Responding Party's work site as soon as possible. In the Responding Party's submission, any issues concerning the compensation of these four individuals can be dealt with by the Board when it hears the Application in Board File No. 1354-12-U. We intend to advise the Applicant when those four individuals have returned to the work site or of any other relevant circumstances (e.g., circumstances in which an individual declines to return to the work site).

8. It appears from oral submissions at the hearing that Maximum did not do so and did not tell the 4 Workers anything. They were advised of BDC Bull Dozer's position, presumably by the Union, and so attended at work on August 7, 2012. There they performed the work assigned to them by supervisors of BDC Bull Dozer. They did so until August 31, 2012 when the hearing in this application was convened.

9. During that time they were not paid by anyone. BDC Bull Dozer wanted Maximum to pay them and at one point sent a cheque to Maximum to cover the hours that the 4 Workers had worked for the first 2 weeks of this 4 week period. Maximum did not cash the cheque or pay the employees. Maximum apparently did not communicate with anyone during this time. At the hearing counsel for Maximum said it wants nothing more to do with BDC Bull Dozer and does not wish to employ anyone at its sites. BDC Bull Dozer refused to pay the 4 Workers directly, although it wanted them to be paid. The 4 Workers remained unpaid on August 31, 2012. They and the Union do not care who issues their pay cheque so long as someone does.

10. This application was filed on August 24, 2012. BDC Bull Dozer filed a response including Declarations within the time required by the Board's Rules of Procedure on August 28, 2012. The hearing was scheduled for August 31, 2012. Maximum was named as a responding party (it was not a responding party in any of the preceding applications) but did not file a response of any sort. It did appear with counsel on the hearing date.

11. At the hearing, Maximum offered various factual assertions that it claimed would explain its action. Counsel's submissions were unsupported by any written Declaration of any sort and represented counsel's understanding of his clients' position from a meeting the day before. I have no doubt counsel did the best job possible in a very short period of time, but the Board does not even have the assistance of a written Declaration in the words of the person who alleges them to be true. Counsel for the Union stated that he had not heard these factual allegations before the hearing. In these circumstances, I decline to give any weight to the factual assertions of counsel for Maximum. The Board cannot in such circumstances weigh the merits of any Declaration that might have been filed by Maximum in comparison to those filed on behalf of the other parties, the Union (and BDC Bull Dozer) have no opportunity to respond, and the explanation for not doing so offered by Maximum (essentially that it was impossible to find a labour lawyer sooner in Toronto) is not worthy of any credence.

12. Both BDC Bull Dozer and Maximum took the same position. They both agreed that the 4 Workers were entitled to be paid and ought to be paid. Both agreed that the ultimate source of the money should be BDC Bull Dozer. Each asserted that the other should be the one to issue the actual paycheques. Both of them refuse to be the one to do so. The reasons asserted for the positions of BDC Bull Dozer and Maximum, despite the best efforts of counsel to put them in as good a light as possible, were unworthy of belief on their face.

13. BDC Bull Dozer asserted that it was not the employer (its position in the other proceedings, of course) and ought not to be required to issue a paycheque and to assume the appearance of being an employer for persons it did not wish to employ. Counsel argued that it did not have the Social Insurance Numbers of the employees and had not created a payroll for them to be paid. Since the employees were in the room during the hearing, acquiring their Social Insurance Numbers was hardly difficult. Since BDC Bull Dozer ran a payroll for at least 21 other persons it said were construction labourers, the process of adding 4 more is hardly a burden.

14. I accept BDC Bull Dozer's position that it had no authority to simply pay the 4 Workers a lump sum and that in doing so it might incur some form of penalty if it paid the wages owing directly to the employees without any form of deduction for income tax, EI, CPP etc. I am less convinced by BDC Bull Dozer's assertion that if it paid the wages and remitted the deductions and contributions to Revenue Canada it might incur a penalty for behaving as an employer when it was not "at law" the employer. Counsel could cite no authority for the proposition that there were penalties for sending money to Revenue Canada.

15. Maximum's concerns were equally unworthy of credit. It asserted that it did not wish to supply anyone to BDC Bull Dozer and ought not to do so. Its reasons for not wishing to do business with BDC Bull Dozer (such as they are) are not before me for the reasons mentioned above, and in any event did not explain its apparent failure to communicate its concerns to its customer or anyone else. The prejudice asserted was that Maximum would be responsible for the employees as an employer for purposes of the Workplace Safety and Insurance Act. It asserted that it had no oversight of the employees on the site and had concerns that their position as an employer with the WSIB might be "at risk". Since it never had any presence on the BDC Bull Dozer project before August 7, 2012 this new found concern is less than convincing. In any event, the risk inherent in any employer's ratings at the WSIB based on its accident history is well known to both of these parties. In the unlikely event that they have not arranged to allocate this risk between them, it is hardly the responsibility of the Board, or the 4 Workers, to sort it out for them.

16. The Union's position is that this was simply a quarrel invented by the two responding parties to punish the 4 Workers and more importantly to persuade the other workers that union membership carried with it the risk of lost employment and lost wages. This theory may well require some considerable quantity of deductive reasoning based on the facts pleaded in the application and in BDC Bull Dozer's response, but it does have the advantage of being at least plausible, unlike the explanations of BDC Bull Dozer and Maximum.

17. Section 98 of the Act provides as follows:

98. (1) On application in a pending proceeding, the Board may,
- (a) make interim orders concerning procedural matters on such terms as it considers appropriate;
 - (b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and
 - (c) subject to subsections (2) and (3), make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer.

(2) The Board may exercise its power under clause (1)(b) or (c) only if the Board determines that all of the following conditions are met:

1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.
 2. There is a serious issue to be decided in the pending proceeding.
 3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.
 4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.
- (3) The Board shall not exercise its powers under clause (1)(b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee.

18. The Board's analysis of section 98 was first articulated in *Patrolman Security Services Inc.*, [2005] OLRB Rep. Sept./Oct. 818 at paragraphs 45 to 53 and 59:

45. Section 98(1) describes the remedies that are available to the Board on an application under section 98. The new remedial authority which the Board was unable to exercise prior to Bill 144 is described in section 98(1) (b) and (c). Essentially, the Board may now reinstate employees to employment or alter or amend their conditions of employment, pending the adjudication on the merits of complaints that the Act has been breached.

46. Section 98(2) describes four conditions that must be met before the Board can exercise its discretion to grant interim relief.

47. Section 98(3) provides that the Board **shall not** provide the interim relief described in section 98(1)(b) or (c) where it **appears** to the Board that the discipline or discharge is **unrelated** to the exercise of rights under the Act (emphasis added).

48. In answering the questions posed by the language in subsections 2 and 3, the Board is obliged to engage in a number of different types of inquiries.

49. Firstly, with respect to section 98(2)1, the Board must determine as a question of fact, whether the circumstances giving rise to the unfair labour practice complaint in the main pending application arose during a campaign to establish bargaining rights.

50. Secondly, section 98(2)2. requires the Board to review the pleadings of both parties to determine whether there is a serious issue between them to adjudicate in the main application.

51. Thirdly, sections 98(2)3. and 4. both require the Board to draw conclusions as to the likely prospective consequences to the parties where the relief sought is or is not granted. Both sections require the Board to attempt to anticipate the degree of harm or the labour relations consequences which will occur, as a result of the granting or withholding of relief. Both require the Board to examine the current circumstances of the parties and to then extrapolate to predict likely future outcomes.

52. Fourthly, section 98(3), crafted with a double negative, requires the Board to determine whether it “appears” that the discipline or discharge was “unrelated” to the exercise of rights under the Act. In the context of an application for interim relief as here, where the main claim is that employees have been discharged *because* they were exercising rights under the Act, the term “unrelated” must mean “not causally related” as there could not be other possible degree of “relatedness” that would be relevant or probative.

53. In the Board’s view, section 98(3) assumes that the Board will look beyond the pleadings and declarations filed to make an assessment of the quality of the evidence to be put forward in the main application. Where the pleadings and materials filed in the interim application reveal disputes of fact, section 98(3) contemplates that the Board will engage in some process of inquiry to determine whether there is an appearance of a relationship between the exercise of rights and the impugned discipline or discharge. The Board is required then to conduct some form of inquiry to determine whether there is an *appearance* of a *causal relationship* between the exercise of rights under the Act and the impugned employer conduct. In the circumstances of this case, the inquiry is directed to determine whether there is an appearance of a causal relationship between the union organizing by Messrs. Hayat and Shabbir, and their discharges.

...

59. From the perspective of making the provisions work in a practical labour relations sense, this notion of the term “appears” in section 98(3) has intuitive resonance. Clearly, the legislature would not intend the inquiry on an interim application to determine the same issues that must and will be determined when the main application is heard on the merits. At the same time, as in section 8(2), the ability to make decisions and to determine consequences on the more cursory standard of “appearance” – as opposed to actual findings of fact – lends itself to expedition. This type of surface investigation is in accordance and balance with the “interim” and temporary nature of the relief available under the section. The inquiry can be cursory and the tolerable margin of error greater, where a mistaken conclusion should it occur, can be cured in the more detailed and time consuming process of adjudication in the main application. From a labour relations adjudication perspective, the legislature’s use of the term “appear” in section 98(3) is a classic example of the balancing of practical expedition as against adjudicative accuracy.

19. This analysis has been applied consistently by the Board since that time. Indeed counsel made few submissions about the manner in which the Act should be applied, reflecting a general understanding and acceptance of this case law in the community.

20. With respect to subsection 98(2) the four requirements of the subsection are clearly met. Both responding parties concede that paragraph 1 was applicable to this case.

21. There is a serious issue as to who the proper employer of the 4 Workers is, and there is a reasonable case pleaded that BDC Bull Dozer is the employer as well as that Maximum is the employer.

22. With respect to paragraph 3, the interim relief is clearly required to prevent irreparable harm. These are construction labourers; they have not been paid in one month. Their rent or mortgage payments were likely due the day after the hearing. Like most of us, they need to put food on the table.

23. With respect to paragraph 4, the responding parties directed much argument as to the balance of convenience between themselves. That is not the focus of the paragraph. Even assuming the Board has the jurisdiction to assess the appropriate outcome of a commercial dispute between two businesses (a dubious proposition at best) I am not in a position to do so in the absence of the contracts and correspondence, as well as detailed pleadings about the nature of the commercial relationships. Those facts and documents are not in the pleadings.

24. As between the Union and the responding parties, the balance of harm favours granting the relief sought. Subsection 98(1)(c) permits the Board to make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer. That is, the Act recognises that unlawful disadvantageous treatment of employees may result in a diminution of employee's support for the Union. In cases such as this where the result of the certification application may well be a vote, the ongoing support of the employees in the bargaining unit is crucial to the Unions' ability to succeed. The "balance of harm" test tilts in the Union's favour when the consequences of failing to make the order would be to demonstrate to the persons the Union seeks to organize that, in counsel's words "union membership results in involuntary and enforced servitude".

25. Finally, subsection 98(3) provides that the Board shall *not* make an order "where it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee". It must be remembered that in this case, the order sought is with respect to the payment of wages that all parties agree are owing rather than with respect to the entirety of the Union's allegations against BDC Bull Dozer. In this case it is impossible to say that the refusal of the responding parties to pay the wages of the 4 Workers is unrelated to their exercise of rights under the Act. It may be that the Union's theory of the motivation and the actions of the responding parties is correct. It may be more simply that BDC Bull Dozer is concerned that if it

paid the employees, the Union might withdraw their current application for certification and file a new one, where the 4 Workers might be more easily seen to be employees of BDC Bull Dozer. It may be that Maximum simply wishes to get as far as possible away from litigation under the Act. Even those more benign possibilities are not unrelated to the ongoing litigation (and possibly future litigation) in the Union's ongoing campaign to organize the construction labourers of BDC Bull Dozer. What the refusal to pay the wages is definitely not related to is the reasons offered by the two responding parties at the hearing. I am satisfied that the failure to pay the wages of the 4 Workers is at the very least not unrelated (and indeed appears to be directly related) to the exercise of the right of the 4 Workers to join the Union in the process of bringing the application for certification.

26. BDC Bull Dozer directed much of its submissions to the proposition, derived from a number of the Board's decisions under the section that the proper application of section 98 is to return the parties to the *status quo ante*. Hence, in its view, the Board ought to require Maximum to pay the employees' wages. The restoration of the status quo is certainly an objective of section 98. In this case what BDC Bull Dozer is asking the Board to do is to restore the *status quo ante* as between BDC Bull Dozer and Maximum. Once again, this is not an adjudication of the respective commercial rights and obligations of Maximum and BDC Bull Dozer. They are both responding parties. It is necessary to balance the rights and obligations of the parties on opposite sides of the litigation. The *status quo ante* is that the 4 Workers performed work at the request of and for the benefit of BDC Bull Dozer and were paid in funds that originated with BDC Bull Dozer. It would be a change in circumstances not to make an order against Maximum since it too was involved in the payment of the 4 Workers' wages. However, not to make an order against BDC Bull Dozer would also be to alter the pre-existing situation.

27. Accordingly the order that is reproduced below was issued orally and in writing on Friday, August 31, 2012. Given the intransigence of the two responding parties and my assessment of the validity of the reasons offered, there is no reason not to extend the temporal scope of the order to the date on which the 4 Workers are terminated. There is no reason not to believe that, if such an order were not made, the same problem would not occur the next payday.

28. The order requires BDC Bull Dozer and Maximum to pay the wages on a joint and several bases. Again, I am not in position to know anything about the relative obligations of the two responding parties to one another on a commercial basis and the Board does not adjudicate commercial disputes in any event. At one time, the two responding parties were able to deliver properly documented paycheques to the 4 Workers and no doubt they are capable of doing so again. How they arrange that payment is matter for them to decide.

29. The order made on August 31, 2012 and confirmed in this decision is as follows:

The Board orders BDC Bull Dozer Construction Ltd. and Maximum Construction Services to pay, on a joint and several basis, Dwayne Bell, Charles Grossett, Milton Powell and Chelsea Prince their wages owing as a result of every hour they attended to work on the site of a construction project

at which BDC Bull Dozer Construction Ltd. was engaged from August 7, 2012 to August 31, 2012. Such payment is to be made no later than 4:00 p.m. August 31, 2012. The Board further orders BDC Bull Dozer Construction Ltd. and Maximum Construction Services to pay, on a joint and several basis, Dwayne Bell, Charles Grossett, Milton Powell and Chelsea Prince for all wages owing as a result of every hour they attend to work at any construction site on which BDC Bull Dozer Construction Ltd. is engaged until the employment of each of the four persons is terminated.

0036-11-R Ontario Pipe Trades Council of The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Applicant
v. **B. M. Metals Services Inc.**, Responding Party

Certification – Construction industry – Employer – One issue before the Board was whether four individuals were employees of the responding party – The Board reviewed the *York Condominium* “true employer” factors, and found that the SCC’s more comprehensive test, with its non-exhaustive list, set out in *Pointe-Claire (City)* better enabled the Board to determine which party exercises the most control over all aspects of the work of the employees in question – The Board found the individuals were integrated more thoroughly into the operations of B.M. Metals than AMI, and that although a third connected business assigned some specific work to these individuals, B.M. Metals hired them to service a contract with Vale and they were only “rented” until needed – The two individuals were fundamentally part of the B.M. Metals organization and under the ultimate direction and control of B.M. Metals and accordingly employed by them – Certificates granted

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *Craig Flood, Aaron Hart, Nick Warus and Rob Kramer* appearing for the applicant; *Kathleen Stokes and Shayne Smith* appearing for the responding party.

DECISION OF THE BOARD: October 18, 2012

1. This is an application for certification brought pursuant to the construction industry provisions of the *Labour Relations Act*, 1995, S. O. 1995 ch.1 as amended (“the Act”), and in particular section 128.1 of the Act. The responding party is B. M. Metals Services Inc. (“B. M. Metals”). B. M. Metals does a number of things, was most of which are not connected to the construction industry at all. It does some work to “rip and haul” slag from the refinery at Vale (formerly Inco) to produce a product which can be used for mine fill. It has a scrap metal business purchasing and selling to large industrial contractors. It has a rail and truck division specializes in mining camps, short line railway spurs, underground rail and truck products and repairs. It has a screening and crushing operation and industrial services division related to certain mining operations (bag house cleaning etc.). Since 2011 it has had a mechanical division.

In 2010 it entered into a new line of business, the provision of skilled workers under a general maintenance agreement with Vale, which is the operation that led to this application for certification and is discussed in more detail below.

2. While, as noted, most of these operations have nothing to do with work in the construction industry, the contract for work at the Vale mine and refinery will involve some construction work, at least to the extent the employees perform repair, rehabilitation or replacement work if not more straightforward new construction. The issue to be decided is whether four individuals are employees of B. M. Metals. The Union says that all four are. B. M. Metals says that two of them are not of their employees, but rather are employed by either a personnel agency, Andre Marcotte Inc. ("AMI") or by another business, Shattercone Metallurgical Inc. ("Shattercone"). It says that the other two employees are employees of B. M. Metals, but that they were performing work that was not part of work in the construction industry, or if they were that they were not performing the work of a plumber or pipefitter.

3. B. M. Metals is one of a number of businesses operating under the general name of "Mansour Group", the name of which is taken from the ultimate owner of the group of companies. The Mansour Group appears to be a remarkable collection of businesses, many of them developed from pre-existing businesses which had become a moribund or insolvent, all dealing with different kinds of services to the mining industry. Mansour Mining is a mining equipment supply company. Consolidated Logistics is a company that provides "less-than-load" trucking services. Consolidated Industrial Products stores or purchases products for resale to the mining industry. Diesel Electric repairs maintains and rents out locomotives. There are 18 such businesses. The two that are most significant in this case are Shattercone that provides catalysts, recycling and metallurgical services to the mining industry and Milman Mining Inc. ("Milman") which purchases, stores, and resells mining equipment and supplies. Milman is also the owner of the building that was once occupied by a company called Neelon Castings, which now houses many of the businesses in the Mansour Group.

4. Each of these businesses has a general manager. Mr. Shayne Smith is the manager of B. M. Metals. Neither of the parties to this application suggests that this group of companies be treated as a single employer, either for the purposes of subsection 1(4) or for any other purpose. Therefore the only responding party is B. M. Metals. B. M. Metals has other employees who do not engage in work in the construction industry, and were therefore not relevant to a construction industry certification.

5. The genesis of the employment relationship of the four employees was a contract between Vale and B. M. Metals for the provision of various types of skilled workers to perform work at Vale's mine and processing facilities. This was a difficult contract for B. M. Metals. Mr. Smith testified that he was required to have a crew of skilled and semiskilled workers available virtually at any time that Vale called for them. Vale did not guarantee any minimum level of business. This was a new venture for B. M. Metals and for Vale and neither of them knew what level of service would be required.

6. Mr. Smith therefore had two objectives, the assembly of the workforce and keeping them productively employed. To assemble a crew of skilled workers he wanted people who were skilled in one trade, such as plumbing or pipefitting, but were able and willing to work at other trades as the need arose. He therefore needed to identify workers who had the necessary skills, were prepared to accept the unconventional hours of work from time to time, and who were prepared to work at the tasks of more than one trade. He also needed workers who were willing to work for a wage that made the entire business profitable for B. M. Metals.

Assembling the Work Force

7. Mr. Smith began the recruitment process by contacting AMI, a personnel placement company. AMI performed the recruiting function by advertising and interviewing individuals who responded. In evidence in chief, Mr. Smith said that AMI "pre-screened" employees for him. The employment of any one individual was approved by B. M. Metals in a process described below. If they were so approved AMI would hire them, but send them to work full-time for B. M. Metals. That is, AMI entered into a contract of employment with the individual employee, took the necessary payroll information, and issued cheques every second week for the hours worked. However, the four employees worked at the premises of the Mansour Group exclusively.

8. The Union called three of the four disputed employees and B. M. Metals called Mr. Smith. They all described the recruitment process. All three of the employees who testified went through a similar process, and the evidence with respect to the fourth, Mr. Alex Kutschke, appeared to be the same. Mr. Groulx and Mr. Lachapelle saw an ad placed either online or at the local HRDC office and applied to AMI. Mr. Prescott had heard of the job at B. M. Metals from Mr. Groulx and called AMI as Mr. Groulx instructed him. All three of them went to an interview with Mr. Brian Walsh of AMI. Since Mr. Walsh did not testify the only evidence I have is that of the three employees. Mr. Walsh told both Mr. Groulx and Mr. Prescott that B. M. Metals was looking for plumbers and pipefitters. He did not mention B. M. Metals to Mr. Lachapelle, although he did tell Mr. Lachapelle that AMI was a "hiring agency" for an undisclosed client. He asked each what wages they were looking for but did not engage in any bargaining and made no firm commitments. He also went through the skills that each of them had, the work experience of each of them and the qualifications or "tickets" each of them had permitting them to perform certain kinds of work. Mr. Walsh was not entirely clear about what he was looking for. He told Mr. Prescott that his client was looking for a TIG welder, and then added the comment "whatever that is"

9. Following the interview all three employees were told that Mr. Walsh would get back to them. Mr. Walsh then sent his report and recommendations to B. M. Metals. In the case of Mr. Groulx and Mr. Prescott, he took their resumes and reproduced them on AMI letterhead as well and forwarded them to B. M. Metals.

10. Shortly afterward Brian Walsh called all three of them individually and asked them to report to B. M. Metals for a further interview. They went to B. M. Metals and met with Mr. Smith and Mr. Villeneuve. At that time all three employees were told that if they were hired that

they would be working for some of the time at Vale. They were again asked about what skills they possessed, what work experience they had and what qualifications or "tickets" they had. B. M. Metals was particularly interested in those who possessed the qualification or had previously held the qualification as a welder on pressure vessels from the Technical Standards and Safety Authority ("TSSA"). Although this was not discussed in the interview, certification of B. M. Metals as a TSSA employer and the employment of at least one TSSA-certified welder was a necessary condition of the Vale contract. They were asked if they were prepared to work outside of their trade as Mr. Smith envisioned that they would be working on piping, and building of structural steel and other sorts of welding work. They were also asked if they were prepared to work irregular hours in the case of an emergency call from Vale. They all agreed that they were prepared to do so. The witnesses agreed that Mr. Smith said that B. M. Metals could not compete with the Union wage rates that they had received in the past, but that they would not be laid off and would be certain to receive 40 hours per week of work.

11. Mr. Groulx said his interview with Mr. Smith that he wanted \$30.00 per hour. No agreement was reached at the interview. He was told within a couple of days by Mr. Walsh from AMI that "they [B.M. Metals] can only pay you \$29.00 per hour". Mr. Smith did say to Mr. Groulx and Mr. Prescott that whatever their rates were, they would be paid two dollars per hour more while working at Vale for B. M. Metals. Mr. Smith also told the Mr. Groulx and Mr. Prescott that "we bought the old Neelon Casting plant and you'll be working there too". Mr. Lachapelle engaged in much more bargaining with Mr. Smith about his wages. They finally settled on \$23.00 per hour which Mr. Lachapelle described as "splitting the difference" between their two positions. Mr. Lachapelle was also promised an unspecified wage increase on the date he obtained his Certificate of Qualification (he was at the time a 5th year apprentice). Mr. Smith was apparently was uncertain about hiring Mr. Lachapelle, as he had two interviews which appeared to Mr. Lachapelle to be relatively similar.

12. In all three cases Mr. Walsh of AMI called to say that the employees had been hired. Mr. Lachapelle and perhaps others attended at the AMI office for WHMIS training and training specific to working at the Vale site. All three had safety training and site indoctrination (for both the Mansour Group site and at the Vale site) conducted by B. M. Metals personnel, Mr. Bernie Villeneuve and Mr. Brian Martin.

13. In argument, B. M. Metals suggested that AMI, as a personnel agency, would likely have other clients who needed workers with the skills these three individuals possessed. It argued that AMI was seeking to hire these individuals to place them anywhere, since any placement resulted in a profit for AMI. I have no evidence to support that assertion. Mr. Walsh sent them only to B. M. Metals and specifically identified B. M. Metals to Mr. Groulx and Mr. Prescott as a client who was searching for skilled workers. On the evidence that was called in this case (which did not include any witness from AMI) I can only conclude that they were hiring for B. M. Metals only.

14. That was the last direct contact any of them had with AMI other than the receipt of their weekly pay cheque. All three recorded their time on timecards which identified B. M. Metals or occasionally "Milman" at the top. The timecards were deposited in the offices of B.

M. Metals. (This was a matter of some dispute in cross-examination, but no evidence was ever called to contradict the evidence of the three employees. Mr. Smith testified that he did not think that was how it should have been reported, but could not contradict the employees.) B. M. Metals calculated the hours that each employee had worked and sent it to AMI. AMI generated an invoice to a B. M. Metals. B. M. Metals paid the invoice. AMI issued pay cheques. I have no evidence as to whether AMI issued its pay cheques before or after receiving payment from B. M. Metals. When the employment of some of these employees was terminated, AMI issued the Record of Employment.

At Work

15. Once the four individuals had been hired for work at B. M. Metals, Mr. Smith had to address his second issue, how to deploy these workers in an economically efficient manner. He had assembled his crew of skilled workers, but he did not have a steady flow of work from Vale. B. M. Metals had not retained these individuals to perform work in which it was already engaged, but to perform work that it expected to receive it from a contract for work in the future from Vale. Mr. Smith had promised to ensure the employees that they would have 40 hours of work per week to keep them working, either in locations at the direction of B. M. Metals' or at the Vale site. Obviously, it was not economic to have them standing idle.

16. The solution for Mr. Smith was to have the work done first at any B. M. Metals operation and then finally within the other companies within the Mansour Group. During the time relevant to this application, the witnesses described the other company as either Shattercone or Milman. Mr. Smith described the process by which he obtained work from the other companies and directed one or more of the four workers to that company. When he had identified the work, the employee would be directed to report to the foreman or supervisor from that company. His employment and day by day tasks were directed and supervised by the Shattercone, or Milman, supervisor. Hours were recorded on a time card (which might be a B. M. Metals card or a sister company card) but were deposited at the B. M. Metals office. In any event, the hours were reported to B. M. Metals which would charge them to the sister company for whom they had performed the work. The charge was recorded in an invoice from B. M. Metals to the sister company. The amount was generally the invoice amount from AMI plus a small overhead and profit markup.

17. Mr. Smith described the relationship among the various Mansour Group companies. Each of them has its own core business, but as is evident, many of the skills necessary for working at each company are transferable, or at least common among, the various companies. In fact, there is a certain amount of trading or transferring employees among the companies that takes place on a regular basis. He testified that B. M. Metals has, from time to time, obtained the services of a millwright from Diesel Electric or a welder from Mansour Mining or a truck driver from Consolidated Logistics. B. M. Metals itself has loaned or transferred employees to other companies when requested. He said that such requests are not always accepted. If the company from which an employee was requested could not spare him or her, then the request would be denied. The employee might be reassigned for the entire time the sister company needed him or her, or for a fixed period of time or simply sent with the proviso that they were to be returned to

B. M. Metals as soon as the specific task was completed. The company that loaned the employee would issue an invoice to the company that had required the work of the employee in the same manner as described above. In fact, at regular meetings of the managers of the various companies, discussions about available surplus employees or employee deficits were a regular feature of the meeting.

18. However, Mr. Smith was clear in his evidence that when B. M. Metals loaned an employee to a sister company, "we have first rights to these people" In case of an emergency, B. M. Metals could call the employee back and could instruct the borrowing company to return the person to B. M. Metals as soon as possible. He would expect that instruction to be complied with. As Mr. Smith put it, again in chief, "we get them busy doing internal work, welders could weld even if its on machinery, and they had all agreed to work outside of their trade; they all said that that was okay. Also we *rented* them out to other companies, to do whatever when they had available work". [emphasis added] He referred to the inter-company invoice for the payment of these workers wages as the "internal invoice for loaning and renting employees"

19. This is in fact what occurred on the application date. Two employees were engaged in work in the B. M. Metals shop (Mr. Kutschke and Mr. Prescott) or had been sent to work for other companies (Mr. Groulx and Mr. Lachapelle).

20. Vale put out its tender for "general support maintenance" in late 2010. It was common ground that the work would involve both maintenance and construction work as those terms are defined in the Act. In January 2011 Vale told B. M. Metals that it had the contract and B. M. Metals began to recruit skilled workers, beginning with the four employees in dispute here, but only after Vale had awarded them the contract. The primary and predominant purpose of their employment was to fulfill B. M. Metals' obligation under the Vale contract. On April 4, 2011, the application date, Vale had still not sent a significant amount of work to B. M. Metals. The disputed workers still occupied the great majority of their time with what Mr. Smith called "internal work"

Work assignment

21. On April 4, 2011 two of the employees (Messers. Groulx and Lachapelle) had been "rented" to Shattercone to perform certain work. On April 4th they were installing a new 1 inch gas line in the Shattercone area of the building, for work that Shattercone had undertaken. Mr. Groulx said that he had been directed to perform this work by Bernie Villeneuve, a supervisor who is part of the B. M. Metals organization. He said that at a meeting a day or two before April 4 he was directed to go to the "Milman area" to perform work on the gas line. While working in the "Milman area" he said he was supervised by Mr. Villeneuve. Employer counsel cross-examined him vigorously on that suggesting that it was in fact Brian Martin (an employee of Shattercone) was a supervisor. Although he was cross-examined extensively on this, including putting to him what the evidence of Mr. Martin would be, Mr. Martin was not called as a witness. However, when it came to the specific duties involved in attaching the 1 inch gas line, when it was put to Mr. Groulx that those instructions came from Mr. Martin, Mr. Groulx replied "if you say so, sure". Mr. Lachapelle testified that he was given directions by Mr. Martin whom

he identified as a Mansour Mining employee. Given that the commercial records establish that Shattercone paid for the work of Messrs. Groulx and Lachapelle on April 4, it seems only logical that they were working in Shattercone's area and that the specific instructions about the work they were to do on those days was given by Brian Martin on behalf of Shattercone.

22. Both men filled in timecards marked B. M. Metals Services Inc. There was much cross-examination about whether the cards they had filled in were for Milman or B. M. Metals and whether Shattercone had simply run out of the appropriate timecards. None of this matters since it is evident that the hours were all reported to both Shattercone and B. M. Metals (and indeed to AMI) and the two employees' paycheques arrived on time.

23. There was also much evidence both in cross-examination of the two employees and in the evidence of Mr. Smith about the location of the sign stating Shattercone Metallurgical Inc. on the door through which the two employees likely passed to get to their workstation from the B. M. Metals area of the building, the presence of a chart of the businesses of the Mansour Group on a wall in the building and a number of signs at the entrance to the Elm Street location where businesses are located. The name Shattercone meant nothing to Mr. Groulx and as far as Mr. Lachapelle, who had heard the name, was concerned it did not amount to anything. Whether they should have made a connection with the signs and chart and the work they were doing on April 4, 2011 does not matter. Having heard their evidence, I have no doubt that they truly did not, on a subjective level, draw any connection between the signs or charts and where or for whom that they were working. Mr. Groulx thought they were working for B. M. Metals, Mr. Lachapelle thought they were working for B. M. Metals and AMI. Neither was an unreasonable belief and the signs themselves, though clearly meaningful to Mr. Smith who is the manager of one of the companies, in the absence of a verbal explanation to Mr. Groulx or Mr. Lachapelle, do not persuade me otherwise.

24. There was no question of discharge or discipline up to April 4, 2011. On one occasion when Mr. Groulx wanted part of a day off for the purposes of a chiropractic appointment, he sought permission from a Bernie Villeneuve, although the evidence was not clear about where he was working on the partial day he had off.

25. As noted, there is no dispute about Mr. Prescott and Mr. Kutschke. They were working on a job for B. M. Metals, pursuant to a contract for work undertaken by B. M. Metals, supervised by B. M. Metals personnel and filling in the B. M. Metals timecards. In other respects the terms and conditions of employment of Mr. Prescott and Mr. Kutschke are the same as those of the other two employees.

26. The work they were doing that day will be dealt with in more detail below. They spent the majority of the day, six hours, assembling and testing a diesel welder. A smaller part of the day was spent welding funnel pipes onto rail cars in pursuit of a contract undertaken by B. M. Metals. There is no dispute that the work with respect to the railcars was not work in the construction industry. The issue is whether or not the assembly of the welder was work in the construction industry and, in any event, whether it is a work of a plumber or pipefitter.

Caselaw

27. Many decisions of the Board dealing with the issue of the "true employer" start (and sometimes end) with a reference to the seven factors set out in *York Condominium Corporation No. 46* [1977] OLRB Rep. Oct. 645. Frankly, a simple recitation of these factors is not particularly helpful in analyzing the question that the Board must ultimately answer. Some factors are of almost no value. The existence of an intention to create the relationship of employer and employee is a rather odd test. The only reason cases like this come before the Board is that the "client" has done its best to structure the relationship so it is not. The perception of many construction employees is usually unhelpful. Rarely does a construction employee have any significant bargaining leverage; as Mr. Prescott said, he does not care who the employer is so long as he is paid. When asked for his opinion, Mr. Lachapelle said both AMI and B. M. Metals were his employer. That is as good a response as any about a conclusion of law that was put to a witness. Why it should be relevant to the Board is not immediately apparent.

28. The factor of identifying the party exercising control and direction over the work is so general stated as to be unhelpful in all but the most simple of cases. In its narrowest sense it has been specifically rejected by the Supreme Court of Canada as an unreasonable analysis. In some sense all three of AMI, B. M. Metals and Shattercone have some control. The question is, as stated by the Board in a number of cases, "who has fundamental control?" Even then the focus on that factor exclusively runs the risk of limiting the analysis too narrowly.

29. While giving recognition to the *York Condominium Corporation No. 46* decision, many other decisions have attempted to develop a more purposeful analytic approach. In *Sutton Place Hotel*, [1980] OLRB Rep. Oct. 1538, the Board said at paragraph 44:

A particularly important question answerable through an evaluation of all the factors set out in *York Condominium* is who exercises fundamental control over the employees. In some cases control over hiring may reflect fundamental control. In other situations, reminiscent of a hiring hall, it may not. In some cases, day-to-day supervision may suggest fundamental control, in others it may not. Similarly with the payment of wages: in the factual mix of some cases the payment of wages, along with other factors, suggest to hold the fundamental control while in other cases it may be of minor significance. No single factor listed in *York Condominium* inevitably points to the position of fundamental control. The Board's ultimate evaluation of who holds fundamental control in any particular fact situation, however, is generally the single most determinative question in identifying the employer. In a word, to find the seat of fundamental control is generally to find the employer for the purposes of *The Labour Relations Act*.

30. In *Grant Development Corporation*, [1993] OLRB Rep. January 21, after referring to the factors in the *York Condominium* case, the Board added a more general overall consideration at paragraph 26:

...apart altogether from common-law considerations, what choice appears to be more consistent with the statutory and labour relations framework within which the Board operates, and the decision must be made?

31. In the *Monarch Corporation*, [2008] OLRB Rep. Jan./Feb. 76, the Board said at paragraph 20:

The assessment of whether Monarch or the intervenor exercised fundamental control over the construction labourers who were assigned to work at the Monarch site requires an evaluation of not just how they perform their work from day to day, but an overall assessment of their employment relationship beginning with how they came to be working at that site and considering not only the contractual or formal arrangements under which they were employed, but the entire context of the relationships between the employees and Monarch and the intervenor and between the Monarch and the intervenor.

32. In *Brookfield Homes (Ontario) Limited* [2012] CanLII 33402 (ON LRB) the Board cited *Monarch Corporation* with approval and described its task as to take "an overall and purposive view of the fundamental control over Mr. Moniz's work" (paragraph 26).

33. In *United Food and Commercial Workers International Union, Local 175 v. Puddy Brothers (Maple Lodge Farms Ltd.)* 2011 CanLII 54878 (ON LRB) the Board said at paragraph 6:

6. The Board does not consider any of these factors to be determinative but has stated that some factors are to be attributed more weight than others. In *533670 Ontario Ltd. (c.o.b. Best Personnel Services)*, [1997] OLRB Rep. September/October 849, (herein "Best Personnel") the Board described its approach in the following terms:

13. None of these factors is necessarily determinative, and the relative significance of any individual factor will depend on the circumstances of the particular case. Having said that, it is apparent that the object of the exercise is to assess the various factors, both individually and in the context of all the factors, in order to ascertain who has fundamental control over the employment relationship, particularly where the factors point in different directions. In making the assessment and determination, the Board is more concerned with substance than with form; that is, the Board will not permit commercial form to obscure labour relations reality.

14. A natural consequence of this is that the first five factors listed in *York Condominium, supra*, which are indicators of control, have become more important than the last two, which are both more subjective and difficult to gauge. This is consistent with the Board's preference (and the underlying theme of the Act as demonstrated by provisions like subsection 1(4) and section 69) for substance over form and the principle that perception and impression cannot be determinative of a question of

law (see, *International Union of Canada and Kent Line Ltd.*, (1972) 27 D.L.R. (3d) 105 (Federal Court of Appeal).

15. When it comes to a question of fundamental control there is little which is more important than the beginning of the relationship (hiring), regulating it (direction, control and supervision) and ending it (termination). Accordingly, *York Condominium*, *supra*, factors 1, 4 and 5 have gained primacy. Indeed, even though the Board (and arbitrators) have been careful to say that it will not necessarily be determinative, decisions like *Dare Personnel*, *supra*, *Sylvania Lighting*, *supra* and *Royal Ontario Museum*, *supra*, demonstrate that direction and control is a very significant factor. At the same time, these decisions also demonstrate that the perception of employees, and commercial contracts as indicators of intention often carry little weight.

16. As noted by the Board in *Sutton Place Hotel*, [1980] OLRB Rep. 1538 at paragraph 43, "[t]he significance of each indicator can only be ascertained through an appreciation of how they all fit together within the facts of each case." The analysis, however, that is being undertaken is aimed at determining which entity exercises fundamental control over the working lives of the individuals in issue. The search is to find the entity that in fact meaningfully impacts the working lives of the workers.

34. In fact, the Supreme Court of Canada has provided the clearest assessment of what the analytic process should be in cases such as these. In *Pointe-Claire (City) v. Québec (Labour Court)* [1997] SCR 1015, the Court was dealing with a judicial review of a decision, originally from the Quebec Labour Court, in a case where the facts are strikingly similar to this one (except in the case of the actual work done). The Court began by acknowledging the limited nature of its task at paragraph 25:

The issue before the Court of Appeal was whether the Labour Court's decision was patently unreasonable. The majority of the Court of Appeal found that it was not. The City is appealing to this Court from the Court of Appeal's decision. To determine whether the Court of Appeal erred in law, this Court must ultimately inquire whether, in light of the evidence in the record, the Labour Court made a patently unreasonable error in declaring that the City was Ginette Lebeau's real employer in the context of a request under s. 39 of the *Labour Code*.

35. However, the Court did go on to set out what sort of analysis it viewed as being reasonable and what was not. The Court was critical of the analysis generally undertaken by the Quebec Labour Court. The Labour Court used what it called the "legal subordination" test, by which it meant a simple analysis of which party was in control of the day-to-day assignment and direction of work performed by the individual. The Supreme Court of Canada also referred critically to an exclusive reliance on what is called the "integration test", a term borrowed from cases where the issue was whether an individual was an independent contractor or an employee (*671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59, [2001] 2 SCR 983). The

Court said explicitly that reliance on those simple tests was unlikely to lead to a reasonable result. It stated that a reasonable analysis undertook what it called a “more comprehensive approach” At paragraph 48 the Court said:

According to this more comprehensive approach, the legal subordination and integration into the business criteria should not be used as exclusive criteria for identifying the real employer. In my view, in a context of collective relations governed by the *Labour Code*, it is essential that temporary employees be able to bargain with the party that exercises the greatest control over all aspects of their work—and not only over the supervision of their day-to-day work. Moreover, when there is a certain splitting of the employer’s identity in the context of a tripartite relationship, the more comprehensive and more flexible approach has the advantage of allowing for a consideration of which party has the most control over all aspects of the work on the specific facts of each case. Without drawing up an exhaustive list of factors pertaining to the employer-employee relationship, I shall mention the following examples: the selection process, hiring, training, discipline, evaluation, supervision, assignment of duties, remuneration and integration into the business.

36. This analysis was adopted by the Superior Court of Justice and the Ontario Court of Appeal in *IBM Canada v. Ontario (Minister of Finance)* [2007] OJ No. 273 (Campbell J.) and [2008] OJ No 1168; (2008) 89 O. R. (3d) 641; leave to appeal to the Supreme Court of Canada denied [2008] SCCA No 255.

37. In the view of this panel of the Board, the focus on the seven criteria enunciated in *York Condominium No. 46* risks placing excessive emphasis on irrelevant facts or placing excessive emphasis on others. In the passage quoted above the Supreme Court of Canada it stated that the value of the more comprehensive test was in “allowing for a consideration of which party has the most control over all aspects of the work on the specific facts of each case”

38. The analysis must also be purposive. This is an application for certification. As the Board asked in *Grant Development Corporation* “what choice appears to be more consistent with the statutory and labour relations framework within which the Board operates” There is little value in certifying a union to represent a group of employees, and then direct it to bargain with a party that has no substantial control of the employment relationship.

39. I conclude that reference to the *York Condominium Corporation* decision is unhelpful. It is more useful to focus on the facts relevant to the kinds of issues referred to in the Supreme Court of Canada’s non-exhaustive list, that enable the Board to come to the conclusion that one party or the other exercises the most control over all aspects of the work of the employees in question.

Analysis

40. In dealing with Mr. Groulx and Mr. Lachapelle, it really does not lie in the mouth of B. M. Metals to say that AMI is the employer. The hiring and employment of all four employees through AMI is identical and the employer concedes that Mr. Kutschke and Mr. Prescott employees of B. M. Metals. That was a concession that B. M. Metals was obliged by the evidence to make. AMI has virtually no relationship with the employees, aside from ensuring a paycheque in the amounts detailed by, and on the instructions of, B. M. Metals. AMI began to recruit employees because it was asked to do so by B. M. Metals. It looked for people who met B. M. Metals' specifications, even when Mr. Walsh did not know what the specifications meant (e.g. TIG welding). Any negotiations about wages took place between the employees and B. M. Metals. Final selection and hiring was decided by B. M. Metals. Once at work, employees had no relationship with AMI at all. AMI gave no direction as to what to do or when to do it, had no concern about the quality or productivity of the work, and had no idea what they were in fact doing. Permission for a day off came initially from Mr. Villeneuve of B. M. Metals. As between AMI and B. M. Metals, it is clear that the employees were integrated far more thoroughly into the operation of B. M. Metals and not at all into the operation of AMI.

41. B. M. Metals' second argument was that Mr. Groulx and Mr. Lachapelle were employed by Shattercone on April 4, 2011. They were working at work assigned by Shattercone, directed by Shattercone's foreman. Shattercone decided what they were to do and when they were to do it and when there was a concern about the speed and productivity of the job, as there was with the installation of the gas line, it was an issue raised by Shattercone, not B. M. Metals. On that basis, B. M. Metals argues that Shattercone exercised direction and control over the employees performing the work (to quote *York Condominium Corporation*) and was therefore the employer.

42. That analysis is overly superficial. Indeed, it reflects the "legal subordination" test as used by the Quebec Labour Court that attracted the disapproval of the Supreme Court of Canada. The employees were originally hired for B. M. Metals' needs. They would not have been hired at all but for the fact that B. M. Metals needed to maintain a workforce of skilled workers to service the Vale contract. B. M. Metals retained "first rights" to the two employees and reserved the right to retrieve them if needed. Indeed they were only at Shattercone because B. M. Metals had no immediate task to assign them. Hence they were, in Mr. Smith's words "rented" to Shattercone, but only because B. M. Metals did not need them. The two employees were fundamentally part of the B. M. Metals organization and under the ultimate direction and control of B. M. Metals. I concluded that Mr. Groulx and Mr. Lachapelle were employed by B. M. Metals.

Mr. Kutschke and Mr. Prescott

43. I conclude that Mr. Kutschke and Mr. Prescott were not employees in the bargaining unit because the work they did was not work in the construction industry. The facts are undisputed. B. M. Metals purchased a diesel welder for two purposes. It needed a welding machine of that capacity for the Vale contract. That contract required B. M. Metals to be able to

weld pressure vessels and pressurized pipes to the standard set by the TSSA. It was required to demonstrate that it had the capacity both in terms of employees and equipment.

44. Ultimately the test was carried out and both B. M. Metals and Mr. Kutschke were "qualified" by a TSSA inspector. On April 4, Mr. Kutschke and Mr. Prescott were assembling and testing the welding machine for six of the eight or nine hours they worked on that date. There are details about where the welding machine was and whether or not it was used for part of that day, but these disputes are not material. The only other work that the employees did that day was to weld pipe onto rail cars. That work is clearly not work in the construction industry (see *E. S. Fox Limited*, [1993] OLRB Rep. April 321 which came to a similar conclusion about work on ships).

45. The contract at Vale was not exclusively for construction. Indeed it was a general maintenance contract so that some if not most of the work was maintenance work and not work in the construction industry. As the Union conceded, the best it could say was that the welding machine would be needed at some unspecified time in the future to perform work at Vale, some of which would be construction and some of which would be maintenance work.

46. The assembly of tools may on occasion be work in the construction industry. If a welder sets up a welding machine and then commences to work on a construction project altering, repairing or demolishing a building or structure, then the work of assembling the welding machine will likely be seen as part of the construction work that the employee performs. Some people empty their toolbox in 10 minutes. Some people spend hours assembling a welding machine. However, the assembly of the welding machine in isolation is not construction work. It is the building of a tool. In this case its first purpose was for the performing of a test to demonstrate TSSA competence. That TSSA certification was necessary for work that was not entirely or perhaps not even mostly construction work. The assembly of the welding machine for the purposes of performing some construction work at some unspecified time in the future is too remote to be able to describe the assembly of the welding machine as connected to any particular piece of construction work. Therefore Mr. Kutschke and Mr. Prescott were not performing work in any construction industry bargaining unit and are therefore not on the list of employees.

Conclusion

47. The appropriate bargaining unit in this application is the bargaining unit for which the applicant applied, that is, its typical bargaining unit under section 158(1). The Board finds, pursuant to section 158(1) of the Act, that all plumbers and plumbers' apprentices and steamfitters and steamfitters' apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all plumbers and plumbers' apprentices and steamfitters and steamfitters' apprentices in the employ of the responding party in all other sectors of the construction industry within a radius of 57 kilometres (approximately 35 miles) of the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining.

48. On the basis of only the information provided in the application (including the information and membership evidence filed by the applicant), the information provided under subsection 128.1(3) of the Act), and the evidence heard in these proceedings, the Board is satisfied that more than fifty-five per cent of the employees in the bargaining unit were members of the applicant on the date the application was filed. The applicant filed membership evidence on behalf of 4 persons, 2 of whose names appear on the list of employees as determined by the Board.

49. The applicant has asked that it be certified pursuant to section 128.1 relying solely on the number of persons in the bargaining unit who are members of the applicant. It is entitled to do so under section 128.1. There is nothing in this application that would cause the Board to consider directing a representation vote.

50. The Board has received no objection from any employee within the time set in the Notice to Employees provided to the responding party for posting.

51. The Board is satisfied that it should certify the applicant.

52. Section 128.1(24) of the Act, which states as follows, provides for the issuance of more than one certificate if the applicant has the requisite support:

If an election under this section is made in relation to an application for certification that relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126,

...

- (b) if the Board certifies the trade unions on whose behalf the application for certification was brought as the bargaining agent of the employees in the bargaining unit under clause (13) (a), it shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas;

...

Therefore, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada in respect of all plumbers and plumbers' apprentices and steamfitters and steamfitters' apprentices in the employ of B. M. Metals Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

53. Further, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant trade union in respect of all plumbers and plumbers' apprentices and steamfitters and steamfitters' apprentices in the employ of B. M. Metals Services Inc. in all sectors of the construction industry within a radius of 57 kilometres (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

54. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 30 days.

0311-12-G International Brotherhood of Electrical Workers, Local 586, Applicant v. C & M Electric Ltd., Responding Party

Construction Industry Grievance – Damages –The Board in an earlier proceeding found the responding party had violated the subcontracting provision of its collective agreement with the applicant – The responding party subcontracted to Protectron through a purchase order which contained the express provision that Protectron was to “provide unionized labour only” – Protectron began the work using non-union labour, and the responding party took back the work and instead performed it with its direct, unionized employees – Protectron, disapproving of the responding party’s response, went directly to the Hospital to obtain the work – Protectron was successful and the Hospital deleted the electrical security systems work from the responding party’s contract – The issue in this phase of the grievance was the quantification of the applicant’s damages, if any – The Board found the applicant was not entitled to any damages from the responding party because the subcontract to Protectron was not the cause of the applicant’s loss – The Board held it will look to see whether the damages arose so necessarily and directly from the employer’s breach that it was necessary to grant compensation – More specifically, the Board will award damages for a subcontracting violation where the subject employer had control of the work, but it will not award damages where the employer does not – In these circumstances, the applicant’s loss arose from an independent event, namely Protectron’s intervention to the Hospital, and not from the responding party’s violation of the collective agreement – Indeed, the responding party no longer had any control over the electrical security systems work when that work was performed on a non-union basis – Applicant’s request for damages dismissed

BEFORE: *Jack J. Slaughter*, Vice-Chair.

APPEARANCES: *Ron Lebi and James Barry* appearing on behalf of the Applicant; *Michael Ruddy and Ken Crawford* appearing on behalf of the Responding Party.

DECISION OF THE BOARD: September 11, 2012

1. This is a referral of a grievance to arbitration pursuant to section 133 of the *Labour Relations Act, 1995* S.O. 1995 c.1 as amended ("the Act").

2. By decision dated June 13, 2012, the Board found that the responding party had violated the subcontracting provision of the collective agreement between the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario and the International Brotherhood of Electrical Workers ("the Principal Agreement") to which the applicant and the responding party are bound.

3. The hearing in this matter continued on Thursday, August 9, 2012 for the purpose of quantifying the applicant's damages, if any.

4. The Board heard brief evidence from James McCartney, the Regional Operations Manager of Protectron. The responding party subcontracted electrical security systems work to Protectron, which is a non-union entity. In turn, Protectron let the electrical security systems work to GBS Communications, which performed it on a non-union basis, without employing members of the applicant. It is this work in respect of which the applicant is claiming damages. Mr. McCartney brought certain documents with him to the hearing as a result of a subpoena *duces tecum* served upon him by the applicant. After a recess to allow counsel to examine those documents, the parties agreed upon certain facts to put before the Board that rendered further testimony from Mr. McCartney unnecessary.

5. Those facts can be briefly stated. A total of 178.5 hours of "Protectron work" was performed on the Queensway Carleton Hospital project ("the Project"). It was performed by non-union electricians. The applicable journeyman electrician total wage package under the Principal Agreement is \$54.27 per hour. At all material times, the applicant had unemployed members who were ready, willing and able to perform the "Protectron work".

6. The parties agreed that the Board could consider all the evidence already adduced before it and any agreed facts to determine the applicant's entitlement to damages without the need to hear further oral evidence. The parties then proceeded directly to argument. The Board reserved its decision, which is set out below after the summary of the legal arguments of the parties.

LEGAL ARGUMENT

7. The applicant argues that an award of damages based upon the formula in *Re Blouin Drywall Contractors Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 2486*, (1974) 57 D.L.R. (3d) 199 (C.A.) is the presumptively appropriate remedy for a violation of the subcontracting provision of a construction collective agreement. The applicant states that the purpose of a subcontracting clause is to preserve work opportunities for members of construction unions. The applicant goes back to first principles of contract law and common law. The applicant posits where there is a right there ought to be a remedy, a proposition that can be traced back to the decision of Holt C.J. in *Ashby v. White* (1703), 2 Ld.

Raym 938 at p. 953; 92 E.R. 126, quoted with approval in a labour relations context in Canada by Rand J. in *Orchard v. Tunney*, (1957), 8 D.L.R. (2d) 273 (S.C.C.)

8. The applicant says that the damages in this case are a foreseeable consequence of the responding party's initial decision to subcontract work to the non-union firm Protectron, even if the responding party did not make the ultimate decision that the work would be done on a non-union basis, as described below. The applicant asserts that the responding party committed a fundamental breach, rather than a technical breach, of the Principal Agreement by subcontracting work to a non-union firm, even if the responding party entered into the subcontract in good faith. The applicant says damages are warranted where the responding party's non-union subcontract is one of the causes of the applicant's loss of the work, even if it is not the direct cause of the loss.

9. According to the applicant, a fundamental principle of contract law is that "in giving damages for breach of contract, the party complaining should, so far as it can be done by money, be placed in the same position as he would have been in if the contract had been performed": *Sally Wertheim v. Chicoutimi Pulp Company*, [1911] A.C. 301 (J.C.P.C.).

10. The applicant also relies on the Board's decision in *Sherwood Windows Ltd.*, [2003] OLRB Rep. September/October 919 for two propositions: (a) that the responding party could have complied with the Principal Agreement by self-performing the work rather than subcontracting to Protectron; and (b) that it is not a valid defence for an employer to say it subcontracted "in good faith" where the subcontract amounts to a violation of the applicable collective agreement.

11. The English case of *County Ltd and another v. Girozentrale Securities*, [1996] 3 All E.R. 834 (C.A.) is cited by the applicant for a general principle of causation, namely that damages will lie in contract where the breach of contract in question is an "effective cause" of the loss, even if it is not the only cause.

12. Returning to Ontario, the applicant refers to an unreported arbitration decision dated April 26, 2012 by S.L. Stewart in *City of Toronto*, for the basic principle that damages should put the party suffering the damages into the position in which it would have been had the violation not taken place. The case is also said to stand for the proposition that damages can be payable for a lost opportunity, and should not be nominal, as they act as an incentive for contract compliance. This decision was upheld on judicial review, wherein the Court made specific reference to the "incentive for compliance" rationale: *City of Toronto v. Canadian Union of Public Employees, Local 79*, 2011 ONSC 2343 (April 12, 2011).

13. In summary, the applicant says that the Board should award *Blouin Drywall* damages to compensate it for its loss, to send a "signal" to the responding party, and to avoid "licensing" violations of the collective agreement.

14. The responding party notes that its subcontract to Protectron by way of a Purchase Order ("the PO") contained the express provision that Protectron was to "provide unionized labour only". The responding party further observes that the applicant did not challenge the facts

set out in paragraphs 5 to 10 of its response, the result of which is reflected in the Board's June 13, 2012 decision, to the effect that the electrical security system work was deleted from the responding party's overall electrical contract by the Hospital and the general contractor Vanbots after they were successfully lobbied by Protectron to do so, without any involvement on the part of the responding party. In other words, the Hospital, which was the owner of the work comprising the Project, exercised an independent contractual right to take away the electrical security system work from the responding party. Hence, the responding party no longer had control of the work when the Hospital re-let it to Protectron, which in turn subcontracted it to a non-union firm which performed it with employees who are not members of the applicant.

15. Therefore, the responding party argues that its initial subcontract to Protectron did not cause the applicant any damages. It was the subsequent and effective "end run" by Protectron to the Hospital that did so. Accordingly, the responding party no longer had control of the work when it was let to a non-union subcontractor, making all of the cases relied on by the applicant distinguishable. In this regard, the responding party referred the Board to its leading decision on project management, *Dalton Engineering & Construction Ltd.*, [1988] OLRB Rep. June 567. The responding party says there is no need for deterrence or a "signal" in this case, as the responding party always intended that the electrical security system work be performed by members of the applicant.

16. In reply, the applicant urged the Board to find that the applicant suffered damages as a result of a chain of events that would not have occurred if the responding party had not started the process by subcontracting electrical work to a non-signatory contractor.

THE FACTS

17. Most of the relevant facts are set out in the Board's decision of June 13, 2012:

4. The relevant facts can be set out fairly briefly. The responding party is bound to the Principal Agreement. The Queensway Carleton Hospital ("the Hospital") embarked on a major redevelopment project. The Hospital engaged Vanbots as the general contractor on the project. Vanbots in turn subcontracted the electrical work on the project to the responding party. The subcontract included work on an electrical security system.

5. The responding party then let a further subcontract to Protectron for the performance of the electrical security system work by way of a Purchase Order ("the PO"). The terms of the PO expressly stated that Protectron was to "provide unionized labour only"

6. However, Protectron decided that it would not comply with the "unionized labour only" requirement of the PO. As a result, the responding party informed Protectron that it would take back the electrical security system work and perform it with the responding party's direct employees who are members of the applicant.

7. Protectron did not like the responding party's advice one bit. Therefore, Protectron did an "end run" around the responding party by appealing to the Hospital to directly obtain the electrical security systems work on the redevelopment project. Protectron has supplied the Hospital with security services for a period of time. The "end run" was successful. Vanbots deleted the electrical security system work from the responding party's subcontract. Protectron got the work and engaged a non-union firm, GBS Communications, to perform the installation.

18. Some supplemental facts are necessary. The timing of events is important. Vanbots awarded the electrical subcontract to the responding party on August 30, 2010. At all material times, this subcontract was subject to the terms of the prime contract between the Hospital and Vanbots. Article 6.1.1 of the General Conditions of the prime contract expressly provided that the Hospital could change the work included in the contract by making additions, deletions or other revisions to that work without invalidating the contract. The electrical subcontract between Vanbots and the responding party in turn bound the responding party to the General Conditions of the prime contract.

19. The responding party's Purchase Order for Protectron to perform the electrical security system work was issued on November 23, 2010, containing the stipulation "provide unionized labour only"

20. Protectron's dispute with the responding party over this stipulation escalated during the first three months of 2012. Protectron's successful lobbying of the Hospital resulted in Vanbots deleting the electrical security system work from the responding party's electrical subcontract by way of a Contract Change Order dated April 1, 2012. The responding party did not have any involvement in, or control over, the decision of the Hospital and Vanbots to issue the Contract Change Order. All of the electrical security system work encompassed in the Purchase Order issued to Protectron was deleted by the Contract Change Order and subsequently performed after April 11, 2012 by the non-union employees of the non-union firm GBS Communications, which received a subcontract to perform the work from Protectron.

ANALYSIS AND DECISION

21. As the Board concluded in its June 13, 2012 decision, the responding party breached the subcontracting provision contained in Article 5.06 of the Principal Agreement by subcontracting work under the jurisdiction of the Principal Agreement to an employer not party to an IBEW Construction Agreement. More specifically, the responding party subcontracted electrical security systems work to Protectron by way of a Purchase Order.

22. This conclusion does not mean that the applicant is entitled to damages as of right. The applicant must still prove that it suffered damages as a result of the responding party's breach of the Principal Agreement.

23. As the Board noted in *Bruce Power LP*, [2004] OLRB Rep. May/June 479, a collective agreement is a contract. Hence, the Principal Agreement is both a contract and a

collective agreement. Further to the Board's observations at paragraph 14 of *Bruce Power*, general principles of contract interpretation apply to the interpretation of collective agreements, but the interpretation of the latter should be made with a view to the labour relations considerations involved, and in particular, the practical realities of the construction industry: *Provincial International Cranes Inc.*, [1998] OLRB Rep. November/December 1004.

24. When it comes to damages in contract, the formulation of the test for damages emanates from the classic common law decision in *Hadley v. Baxendale* (1854), 9. Ex. 341 at p. 354, 156 E.R. 145:

...the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, as the time they made the contract, as the probable result of the breach of it.

25. Both English and Canadian courts and tribunals have grappled with making sense of, and applying the *Hadley* principles over the years. However, at the end of the day, what the aggrieved party must prove is that its damages stemmed from the breach of contract. As Beldam L.J. stated in *Girozentrale supra* at p. 849, the trier of fact must answer "the simple question whether [the] breach of contract was the cause of [the] loss."

26. This sentiment is also expressed in the oft-cited text *McGregor on Damages* 14th edition (London: Sweet & Maxwell Ltd., 1980) at pp. 8 and 9, where the learned authors state, *inter alia*, that a plaintiff "cannot recover damages... for such loss of which the defendant's conduct is not the cause".

27. With respect to the issue of damages generally, the Board said in *Canada Cement Lafarge Ltd.*, [1981] OLRB Rep. December 1722 that a "labour board should be concerned more with the core purpose of a complaint and the remedies necessary to achieve that purpose." In *Grey-Owen Sound Health Unit*, [1980] OLRB Rep. February 223, the Board looked to see whether the damages arose "so necessarily and directly from the employer's breach that in order to effectuate the policies of the Act, it was necessary to grant compensation." In terms of causation, the Board examines whether there exists a "firm factual connection" between one event and another: *Megatech Electrical Ltd.*, [1999] OLRB Rep. March/April 257.

28. Turning to the facts of the instant case, the Board must determine whether the responding party's subcontract of the electrical security systems by way of Purchase Order to Protectron was the cause of the applicant's loss.

29. On the facts before it, the Board finds that the responding party's Purchase Order for electrical security system work to Protectron was not the cause of the applicant's loss, although it did constitute a breach of the Principal Agreement.

30. At all material times that the electrical security system work was under its control, the responding party endeavoured to have the work done by the applicant's members. The Purchase Order directed Protectron to "provide unionized labour only." When it appeared Protectron would not do so, the responding party told Protectron it would take the work back and perform it with members of the applicant in the employ of the responding party.

31. It was an independent event, the direct intervention of Protectron with the Hospital that caused Vanbots to delete the electrical security systems work from the responding party's contract, which caused the applicant's loss. This independent event removed the electrical security systems work from the responding party's control. It occurred without any encouragement or involvement on the part of the responding party. All the electrical security systems work was performed after this item was excised from the responding party's contract, at a time when the responding party no longer had any control over this work.

32. Accordingly, the responding party's violation of the Principal Agreement by entering into a Purchase Order with Protectron did not cause the applicant's loss. To illustrate this point further, assume Protectron had successfully lobbied the Hospital to remove the electrical security systems work from the responding party's contract where the responding party had subcontracted the work to a local unionized contractor. The loss to the applicant would be the same, although no violation of the Principal Agreement occurred. That is because the loss resulted from the actions of Protectron, and not from the responding party's choice of subcontractor. Again, the Purchase Order to Protectron did not cause the applicant's loss.

33. As the case law referred to the Board by the parties demonstrates, the Board will award damages for a subcontracting violation where the subject employer has control of the work as in *Sherwood Windows supra*, but not where it does not, as in *Dalton Engineering supra*.

34. In this case, as described above, the responding party no longer had control over the electrical security systems work when that work was performed on a non-union basis. That performance of the work, and the applicant's attendant loss, arose from the independent intervention of Protectron to obtain the electrical security systems work directly from the Hospital at the expense of the responding party. The applicant's loss did not arise from the responding party's initial Purchase Order to Protectron, although that Purchase Order amounts to a violation of the Principal Agreement.

35. Accordingly, the Board finds that the applicant is not entitled to damages in this matter, for the reasons set out herein.

3450-11-R; 34561-11-R; 3481-11-R Labourers' International Union of North America, Local 247, Applicant v. **Expercom Telecommunications Inc.**, Responding Party v. Port Perry Employees Association, Intervenor; Labourers' International Union of North America, Local 527, Applicant v. **Expercom Telecommunications Inc.**, Responding Party v. Port Perry Employees Association, Intervenor; International Union of Operating Engineers, Local 793,

Applicant v. Expercom Telecommunications Inc., Responding Party v. Port Perry Employees Association, Intervenor

Bargaining Unit – Certification - Construction Industry – Practice and Procedure – Termination – The applicants sought certification pursuant to section 158(2) of the Act to represent bargaining units of construction labourers and operating engineers in specified Board Areas for all sectors of the construction industry other than ICI – The applicants were attempting to displace the intervenor, who held bargaining rights for all employees, including construction labourers and operating engineers, employed by the responding party – The issue was the appropriate bargaining unit – The applicants argued that, despite their application to “carve out” a subset of the intervenor’s bargaining rights, the bargaining unit was deemed appropriate under section 158(2) and the Board was not required to find the *most appropriate* bargaining unit – The responding party and the intervenor argued that the applicants in such a displacement application must take the bargaining unit as they find it, submitting that the Board’s approach to bargaining unit descriptions in a displacement application was an exception to section 158(2) – The Board held that the applicants must adduce their evidence first, since they knew on what facts they wanted to rely in order to show why the Board should depart from its displacement policy – With respect to the merits, the Board found that the applicants’ bargaining unit was deemed to be appropriate under section 158(2) and that the applicants were entitled to “carve out” the proposed bargaining unit – The applications raised two distinct Board policies that might appear in conflict: the first is that the Board seeks to determine whether the applicant’s proposed bargaining unit is appropriate, rather than attempting to determine the most appropriate bargaining unit; the second is that the Board in a displacement application normally finds the existing bargaining unit to be the appropriate unit – The Board found that those two policies were not inconsistent – Rather, the Board’s approach in a displacement application was an *exception* to its usual practice of accepting the applicant’s proposed bargaining unit, if appropriate, even if it was not the most appropriate bargaining unit – In these circumstances, the Board’s displacement policy did not preclude the applicants from seeking to represent the employees in the bargaining units that they proposed – Matter continues

APPEARANCES: *S.B.D. Wahl* and *S. Axelson* for Labourers' International Union of North America, Local 247; *S.B.D. Wahl* and *L. Carrozzi* for Labourers' International Union of North America, Local 527; *Kirsten Agrell* and *Rick Kerr* for International Union of Operating Engineers, Local 793; *James Lenoury* and *Scott Tippin* for the responding party; *John-Edward C. Hyde* and *Gord Brooks* for the intervenor.

BEFORE: *Harry Freedman*, Vice-Chair.

DECISION OF THE BOARD: September 25, 2012

1. The Board in its decision dated August 14, 2012 in these three applications for certification being dealt with under section 128.1 of the *Labour Relations Act*, 1995, S.O. 1995,

c. 1 as amended (the "Act") determined the applicants were applying for certification to displace the intervenor as the bargaining agent for the employees the applicants seek to represent.

2. The intervenor holds bargaining rights for all employees of the responding party in the province of Ontario pursuant to its collective agreement that expired February 5, 2012, including construction labourers and operating engineers performing work in the construction industry.

3. The applicants seek certification pursuant to section 158(2) of the Act to represent bargaining units of construction labourers (Board File Nos. 3450-11-R and 3451-11-R) and operating engineers (Board File No. 3481-11-R) employed by the responding party in Board Areas 12, 13, 14, 15, 29, 30 and 31 in all sectors of the construction industry other than the industrial, commercial and institutional sector. They argue the bargaining units they propose are appropriate even though they seek to displace the intervenor as the bargaining agent.

THE ISSUE

4. The responding party and intervenor, while they accept that the applicants, as affiliated bargaining agents, are entitled to apply for certification in the construction industry for bargaining units described in terms of their respective trade or craft, submit that as the applicants are applying to displace the intervenor as the employees' bargaining agents the applicants are required to displace the intervenor in the bargaining unit for which the intervenor held bargaining rights. In other words, the responding party and intervenor contend that as these applications are displacement applications, the applicants must take the bargaining units as they find them. They contend the Board's approach to bargaining unit descriptions when dealing with displacement applications is an exception to section 158(2). The importance of not disturbing an existing bargaining structure is a paramount consideration.

SUBMISSIONS OF THE APPLICANTS

5. The essence of the applicants' submissions is based on section 158(2) of the Act. That section provides that a bargaining unit proposed by an applicant that encompasses "a unit of employees employed in all sectors of a geographic area other than the industrial, commercial and institutional sector shall be deemed to be a unit of employees appropriate for collective bargaining." The applicant contends, as a matter of statutory interpretation, that because section 158(2) deems the units they seek to represent in these applications to be appropriate bargaining units, the Board must accept those bargaining units. The applicants submit that if the bargaining units they propose are appropriate for collective bargaining, the fact that other units, such as the units proposed by the responding party and intervenor may also be appropriate for collective bargaining is irrelevant.

6. The applicants submit that even if they cannot persuade the Board that they are entitled to the bargaining units they seek by reason of section 158(2) of the Act, then they say it may be necessary to hear evidence so that they can establish that they are entitled to carve out their proposed bargaining units from the bargaining unit set out in the collective agreement

between the responding party and intervenor. And, they say, there may be an issue between the parties as to which of them is to proceed first to call that evidence.

7. The Board, the applicants argue, does not select the most appropriate bargaining unit but rather determines *an* appropriate bargaining unit. So long as the bargaining unit proposed by an applicant is an appropriate bargaining unit the Board must determine that unit is the appropriate bargaining unit in a certification application. That principle is well established and has invariably been adopted by the Board in a number of decisions cited by the applicants. For example, in *Lacroix Construction Co. (Sudbury) Ltd.*, 2003 CanLII 39857 (ON LRB) the Board wrote at paragraph 3:

The applicant has applied for its typical craft unit in all sectors of the construction industry other than the industrial, commercial and institutional sector in Board Area 21. Such a unit is contemplated by section 158(2) of the Act. The responding party proposes that the appropriate unit be the type contemplated by section 158(1). The Board is not directed by the Act to find the *most* appropriate unit, but simply *an* appropriate unit. Since section 158(2) deems the unit applied for in this application to be an appropriate unit, that is the end of the inquiry. The applicant's unit is appropriate for collective bargaining.

The rationale for the Board's conclusion in *Lacroix Construction Co. (Sudbury) Ltd.* was articulated earlier in *Primeline Plumbing Ltd.*, [2001] OLRB Rep. Sept./Oct. 1240; application for reconsideration dismissed: 2001 CanLII 3889 (ON LRB). The Board wrote at pages 1241-42:

8. On the application date, the responding party employed persons in the plumbing trade in three different Board areas. The responding party's position rests on the assumption that the applicant can be compelled to seek to represent employees in all Board areas in which employees were working on the application date. Section 158(2) of the Act expressly provides to the contrary. That section expressly permits a trade union that is represented by an employee bargaining agency (as is the applicant) to bring an application for certification in respect of all sectors of the construction industry other than the industrial, commercial and institutional sector in a geographic area (as was done in this case) and goes on to provide that the "unit shall be deemed to be a unit of employees appropriate for collective bargaining." Simply put, the applicant is free to determine what geographic area or areas it may seek to organize. So long as there are employees working in those geographic areas on the date of application, then a bargaining unit described in terms of those areas is an appropriate bargaining unit. Similarly, the Act does not oblige an applicant trade union to attempt to organize all unrepresented employees at work on the application date in every geographic area in which the employer is carrying on construction work on the date of application. ...

9. ... A trade union can seek to represent a group of employees in an appropriate bargaining unit, and in the construction industry, the employees

considered in making the determination are those who were working in the bargaining unit on the application date. Clearly, the bargaining unit proposed by the applicant is appropriate for collective bargaining by reason of section 158(2) of the Act. So is the bargaining unit proposed by the responding party. Nevertheless, so long as the applicant's proposed bargaining unit is appropriate for collective bargaining, the Board will accept it even though the unit proposed by the responding party might also be appropriate.

See also *Aquasafe Mechanical Ltd.*, 2007 CanLII 10721 (ON LRB).

8. The applicants in their argument dealt with what they say is the one decision that suggests a contrary result when a trade union is seeking to displace an incumbent union bound by a collective agreement in a timely certification application. The Board in *AGI Traffic Technology Inc.*, [2009] OLRB Rep. Mar./Apr. 190 in an application for certification made by Local 586 of the International Brotherhood of Electrical Workers ("IBEW") to displace another IBEW local (Local 353) that had previously acquired bargaining rights for all sectors of the construction industry outside the industrial, commercial and institutional sector in the province of Ontario dismissed the attempt by Local 586 to carve out a smaller geographic area from the province wide unit for which Local 353 held bargaining rights. The decision noted that Local 353 had acquired its province wide bargaining rights earlier through an application for certification to displace a portion of the bargaining unit for which the Labourers' International Union of North America, Ontario Provincial District Council had held bargaining rights.

9. Local 586 had applied for certification under section 158(2) of the Act and argued in that case, as the applicants did in this case, that once the Board was satisfied that the bargaining unit sought accorded with section 158(2) and was therefore deemed appropriate, the Board had no choice but to find that the bargaining unit for which it sought certification was the appropriate bargaining unit. The Board wrote at page 193:

Obviously subsection 158(2) which, as noted above, begins with the words despite section 128(1), modifies the Board's powers to determine the appropriate bargaining unit under section 128(1). However, with great respect to the arguments advanced by Local 586, we do not conclude that subsection 158(2) entirely removes all discretion that the Board might otherwise have pursuant to subsection 128(1) in determining the unit of employees that is appropriate for collective bargaining.

In reaching that conclusion, the Board relied on the decision in *Havenwood Homes*, [2008] OLRB Rep. Mar./Apr. 201 in which the Board held that section 128(1) of the Act permitted the Board to determine that the appropriate geographic area referred to in section 158(2) could include more than one Board area.

10. In *AGI Traffic Technology Inc.* the Board determined that despite finding that the bargaining unit Local 586 proposed was an appropriate bargaining unit, other factors led the Board to conclude that the larger bargaining unit described in the collective agreement between

Local 353 and the employer was the bargaining unit that was the appropriate bargaining unit in that case. The Board wrote at page 197:

Ultimately this situation is not so far removed from that which exists in normal displacement applications such that the basic principles which led to the Board establishing its mirroring policy (and the specific reasons for departing from the general policy in any particular case) should simply be set aside by virtue of subsection 158(2) and the applicant's preference for a smaller geographic area. All that subsection 158(2) does in these circumstances is deem the bargaining unit which Local 586 applied for to be within a subset of bargaining units all of which are an appropriate bargaining unit. It is from this subset that the Board must ultimately determine the bargaining unit which it finds to be the appropriate unit. In the normal course this would be the one which the applicant has chosen to apply for. However, as noted above where there is an existing bargaining unit there must be some clear and cogent reason(s) for finding some other unit to be the appropriate one, even though the Board would, in all likelihood, find the bargaining unit applied for to be the appropriate one but for the existing bargaining unit. No such cogent reasons exist here and the sole result of the Board finding the applicant's smaller unit to be the appropriate one would be to fragment the existing bargaining pattern which was established by way of the certificate issued to Local 353 and which has thereafter been in place for approximately four years as a result of the collective agreement.

The applicants' position is first that the decision in *AGI Traffic Technology Inc.* was wrong and should not be followed. They say that decision was the first time the Board had addressed the issue squarely. They argue the reasoning of the Board in that decision did not take into account the difference in the words used in section 158(1) which does not contain a "deeming provision" with section 158(2) which does.

SUBMISSIONS OF THE RESPONDING PARTY AND INTERVENOR

11. The responding party and intervenor in their submissions relied on the reasoning in *AGI Traffic Technology Inc.* They say the Board's rationale in that case is compelling and consistent with the Board's jurisprudence that requires a union that seeks to displace the incumbent trade union through certification must take the bargaining unit that is in place. The responding party and intervenor submitted the analysis the Board adopted in *Ontario Power Generation Inc.*, [2001] OLRB Rep. Nov./Dec. 1400 as discussed later by the Board in *Ontario Power Generation Inc.*, [2005] OLRB Rep. July/August 675 demonstrated the importance and primacy of the approach the Board takes to the description of the bargaining unit in a displacement situation. The Board in the later *Ontario Power Generation Inc.* case wrote at page 683:

17. The Board in *Ontario Power Generation Inc.*, *supra*, held that a province wide unit in the electrical power systems sector that mirrored the bargaining unit in the EPSCA collective agreement was appropriate in that case as the applicant was displacing the incumbent bargaining agent. The Board's

comments about how it determines the appropriate bargaining unit when faced with a displacement application are, in our view, applicable to these proceedings. The Board wrote at page 1414:

In the end, the basic rationale which underlies the Board's policy with respect to the appropriate bargaining unit in a displacement application is applicable to the facts of this case: the importance of ensuring that decisions about the future of a bargaining unit are made only by members of that bargaining unit; the presumed viability of voluntarily created bargaining structures; and the need for certainty and predictability in representation matters. While the results may not sit comfortably for some of the parties to this application, none of the considerations urged on the Board in this case undermine the application of these principles in this case.

12. The responding party and intervenor accept there are exceptions to that displacement policy. The "craft carve out" is one which is why they did not contest the applicants' claim to bargaining units described in terms of their respective trade or craft. See *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254 (application for reconsideration dismissed, [1989] OLRB Rep. March 234).

13. The applicants submitted that if the Board is persuaded that it has the discretion to determine an appropriate bargaining unit based on the analysis in *AGI Traffic Technology Inc.* then they say there are compelling reasons for finding the units they seek are appropriate in all the circumstances. The applicants contend that based on the facts as at the time they made their applications, there are clear and cogent reasons to depart from the displacement policy.

14. The Board advised the parties that it was not prepared to render its decision with respect to the applicants' argument that the Board must accept the bargaining units they proposed because those bargaining units are appropriate bargaining units by reason of section 158(2) of the Act before hearing the parties' alternative argument. As noted earlier, the applicants contend that even if the Board had some discretion in determining the bargaining unit description, they say they are nevertheless entitled to carve out the bargaining units they seek in this displacement application from the larger all employee province wide bargaining unit in the collective agreement between the responding party and intervenor.

15. In order for the Board to determine whether it would permit the applicants to seek certification for smaller bargaining units that are carved out of the larger province wide all employee bargaining unit currently represented by the intervenor, it was necessary to receive and consider the facts that would be relevant to that issue. The parties submitted there was relevant evidence the Board should consider in determining the appropriateness of the bargaining unit.

16. The parties disagreed over which party should proceed first with their evidence when the Board indicated it was prepared to receive the parties' representations about the facts they intended to prove through evidence. Following the parties' submissions on that procedural issue, the Board made the following ruling orally at the hearing:

PROCEDURAL RULING

17. The applicants seek to displace the intervenor as the bargaining agent in respect of bargaining units of employees comprised of their respective trade or craft that are narrower in geographic scope than the bargaining unit for which the intervenor holds bargaining rights.

18. The applicants' principal position is that their proposed bargaining units are appropriate by virtue of section 158(2) of the Act and therefore should be determined as the bargaining units in these applications. In the alternative, they assert that even if section 158(2) does not dictate that result, that despite this being a displacement application the Board ought not to adhere to its displacement policy based on the relevant facts and circumstances present in these proceedings.

19. The issue being addressed is whether the applicants must lead evidence first relating to the bargaining unit description or whether the responding party and intervenor should call their evidence first to demonstrate that, according to the applicants, if the Board were to find the smaller bargaining units the applicants propose are appropriate in this case, doing so would cause serious labour relations problems.

20. The Board, in determining an appropriate bargaining unit is guided by the statute, the relevant factual context and labour relations policy considerations.

21. The Board adopts the approach taken in *Peel District School Board*, [1998] OLRD No. 4524 at paragraphs 17 and 18:

17. Over the years, the Board's approach to bargaining unit description issues has evolved with the times and in response to changes in the various kinds of workplaces. From the many years of jurisprudence, a single, relatively simple underlying principle can be discerned. This principle can be put in a form of a question: Is the proposed bargaining unit more likely than not to produce a viable and meaningful collective bargaining relationship in the context of the particular industry or business? This question can be easier to ask than to answer, but generally it is not. It is a question which is best answered by looking at the forest rather than at individual trees. The answer to the question is more likely to be obscured than revealed by a complicated approach to it, and the Board tends to be leery of complicated bargaining unit arguments in an area where it is impossible to apply a formula or blueprint which will yield a precise result in every, or indeed in any, case.

18. The question cannot be approached by asking what those affected by an application want, or by pandering to the interests or desires of one institutional party to the exclusion of those of the other or of the employees. On the contrary, the history of labour relations in this province suggests that such an approach ultimately benefits no one, but costs everyone. Instead, what is required is an objective balancing of all legitimate interests, including the public interest in labour relations peace and stability. This requires a consideration of factors such as employee communities of interest, the

particular employer's structure and organization, the "industry" or "business" in which the employer and employees are engaged, the particular legislative context, the right of employees to determine for themselves whether or by which union they will be represented, the right of an employer to manage his business, and so on. There is no list of factors which will apply in every case, and the weight which is properly given to any particular relevant factor will depend on the circumstances of the particular case. Accordingly, a bargaining unit which is appropriate in one labour relations setting may not be appropriate in another. In approaching bargaining unit description issues, the Board has long been aware that the manufacturing industry is different from the retail sector, which is different from the education sector, which is different from the public sector, which is different from the construction industry. Indeed, there are differences even within each sector or industry. To take an example close to this case, universities are different from community colleges, which are different from elementary and secondary schools, both as a matter of legislation and of labour relations reality.

In this case the applicants assert the responding party and intervenor are in the best position to adduce evidence relating to the factors described by the Board in *Peel District School Board*.

22. However, in displacement applications there are other considerations to take into account. In *Days Inn Toronto Downtown*, [1996] OLRD No. 2846 the Board noted at paragraph 10:

The parties agree that the general proposition of law governing this issue is that in a displacement application, the Board's practice is to grant a bargaining unit description which "mirrors" the bargaining unit which had been negotiated between the displaced trade union and the respondent. Further, the Board *may depart from this practice where there are compelling reasons to do so* (See *The Canadian Red Cross Society*, [1994] OLRB Rep. Dec. 1694, at paragraph 19). As the Board has observed, what better evidence of an appropriate bargaining unit than what the parties have themselves developed in the workplace over time and agreed to? [emphasis added]

23. That approach is aptly described in a passage from *Ontario Hydro*, [1980] OLRB Rep. June 882 that was cited in *Bestview Holdings Limited*, [1983] OLRB Rep. February 185:

Where parties have established the viability of a bargaining unit through actual bargaining and where the history of such bargaining has been relatively satisfactory, this Board ought not to encourage fragmentation. Moreover, in these cases, the Board is not dealing with employees who are unrepresented by a trade union. Thus, more concern can be given to the most viable unit from a collective bargaining viewpoint without the risk of impeding the initial organization of employees attempting to engage in bargaining. But the principle cannot be without its exceptions. Section 48 of the Act clearly envisages displacement applications which are less extensive than pre-existing bargaining units. While there is a strong presumption in favour of the incumbent trade union's bargaining unit, the Board is willing to entertain

evidence and submissions on why the status quo ought not to be maintained. The incumbent trade union may clearly have failed to represent a distinct and cohesive group adequately, a problem that has sometimes reared its head in the relationship of skilled and unskilled employees. This problem of unsatisfactory representation may be combined with a capacity in the employer to tolerate somewhat greater fragmentation, particularly if the smaller unit sought can meet the principles of appropriateness generally applied to certification cases. In the case at hand, the applicant indicated its intent to adduce evidence on the distinctive nature of Hydro's nuclear energy facilities; on the common training and conditions of employment of the affected employees; and on the manner in which they have been represented by CUPE Local 1000. The unit relied upon by the intervener and the employer is not one that the Board would normally grant and the intervener, itself, never had to organize all of the affected employees. Against this background, we are not prepared to say at this time that the applicant will be unable to make out a case justifying the unit it has requested. On the other hand, the applicant's chances for success based on its answers to the Board's probing and against the background of all that we have reviewed above, cannot be characterized as substantial.

24. In this case, the applicants wish to adduce evidence to rebut the presumption in favour of the incumbent's bargaining unit.

25. In *Days Inn Toronto Downtown* the responding party sought to have the Board depart from its normal approach to displacement applications. The responding party had to demonstrate the existence of compelling reasons necessary for the Board to do so.

26. In my view, the applicants know what facts they want to rely on to show why the Board should depart from its displacement policy. It is not up to the intervenor or responding party to guess what they have done or not done in relation to the bargaining units of employees the applicants seek to represent that would warrant the Board departing from its long standing displacement policy.

27. In the result, it is the applicants that must adduce their evidence first.

FACTS RELATING TO THE BARGAINING UNIT DESCRIPTION

28. The applicants outlined the facts they intended to prove, as did the responding party and intervenor subsequently. Most of the facts were not disputed by the parties. Those facts that were disputed are not, in my view, material to the disposition of this matter.

29. The salient facts can be summarized briefly. The responding party was successful in securing installation work from Bell Canada in Eastern Ontario. That work had previously been done by Aecon. The employees of Aecon who were doing that Bell Canada installation work were represented by the applicants.

30. The responding party took over the Bell Canada installation work as of January, 2011. After that date the responding party became responsible for the work that had been done by Aecon for Bell Canada in eastern Ontario. The responding party hired Aecon's manager of that eastern Ontario business and made him responsible for its Bell Canada business in eastern Ontario. The crew leaders or foremen who worked for Aecon were hired by the responding party. Those crew leaders were responsible for the same crews as the responding party had hired the employees on those crews who had worked for Aecon. The facilities or yards out of which Aecon worked were after January, 2011 used by the responding party as was the equipment.

31. At the time the former employees of Aecon were hired by the responding party, they were told they were required to sign a dues authorization form to permit dues to be deducted and remitted to the intervenor. The intervenor had not taken any steps to appoint stewards or convene meetings with the employees the applicants seek to represent prior to the application date. The intervenor did not provide copies of the collective agreement to those former Aecon employees nor did anyone ask for one. Moreover, as of the date of these applications the employees the applicant seeks to represent had not been provided with any contact information for the intervenor. There was no website or telephone listing for the intervenor.

32. The responding party employs approximately 150 people in various parts of the province. In the eastern Ontario or "613 region", it has about 35 employees. There are 115 employees who come within the scope of the intervenor's collective agreement with the responding party and approximately 33 employees who come within the scope of the three bargaining units the applicants propose.

33. The intervenor contended that unlike employment with other construction industry employers, its members have a long term employment relationship with the responding party. Their employment is not episodic.

34. The responding party and intervenor submitted that although the eastern Ontario crews did the Bell Canada installation work, that work was also done from time to time by crews that were dispatched from its other existing yards that had not been part of the Aecon operations. They also contended that while the employees the applicant seeks to represent carried out the normal workload other employees were dispatched into those areas when there were sudden increases in the work.

35. The applicants disputed the factual representations suggesting that the responding party had assigned crews from central and southern Ontario to work in the "613 region" after it secured that work from Bell Canada and contended, at least up to the time they filed their applications the responding party had not assigned crews from elsewhere to do the available work in the eastern Ontario 613 region.

PARTIES SUBMISSIONS ON THE FACTS

36. In determining this matter, I am prepared to accept the factual representations made by the intervenor and responding party and the facts on which the parties agreed.

37. The essence of the applicants' submissions is that the bargaining units they seek to represent are a discrete group of employees who had been represented by the applicants until their employer was displaced by the responding party. Those employees continue to do the same kind of work as before organized in the same fashion on the same crews and supervised by the same individuals. The applicants contend the employees they seek to represent have not been integrated into the responding party's operations in any significant way. They argue the facts provide cogent and compelling reasons for finding it appropriate to carve out the geographic scope of the bargaining units they seek from the province wide bargaining unit.

38. The responding party and intervenor submit that acceding to the applicants' request would result in undue fragmentation of the responding party's organization and labour relations. The responding party and intervenor have a stable labour relations structure based on a province wide bargaining unit scope that reflects the nature of the responding party's operations. The responding party submits that the applicants will represent, if successful only about 25% of its employees and therefore argues that such small bargaining units ought to be avoided. Stable long term labour relations are founded on larger, comprehensive units which is why fragmentation of units ought to be avoided.

39. If the applicants' bargaining units were accepted, the intervenor contends its members would effectively be barred from working in those areas coming within the applicants' bargaining units if the applicants are successful in obtaining certification. The intervenor submits the applicants have not demonstrated inadequate representation since the intervenor only had the right to represent those employees for just about a year. No complaint was made about inadequate representation and no one had sought to have stewards appointed.

ANALYSIS AND DETERMINATION

40. The determination of an appropriate bargaining unit is a matter of the Board applying the provisions of the Act, its judgment and discretion to the facts presented. In this case the parties raise two distinct Board policies that might appear to be in conflict.

41. The first is that the Board does not determine the most appropriate bargaining unit but rather determines whether the bargaining unit proposed by an applicant is appropriate, and if the applicant's proposed unit is appropriate, that is the bargaining unit the Board determines is the appropriate bargaining unit. As the Board stated in *Primeline Plumbing Ltd., supra*:

...so long as the applicant's proposed bargaining unit is appropriate for collective bargaining, the Board will accept it even though the unit proposed by the responding party might also be appropriate.

42. The second is that when an applicant is seeking certification to displace an incumbent union and proposes a bargaining unit that differs from the incumbent's bargaining unit, the Board normally finds the existing bargaining unit to be the appropriate bargaining unit in that application rather than the applicant's proposed bargaining unit. That principle is well

established and is perhaps best articulated in *Milltronics Limited*, [1980] OLRB Rep. Jan. 56 where the Board wrote at page 58:

Where one trade union is seeking to displace another, however, the established bargaining structure is *prima facie* appropriate particularly if it has been established by the parties themselves, through collective bargaining, and continued through the years over several collective agreements. Indeed, what better evidence of "appropriateness" could there be than a pre-existing bargaining structure which the parties have developed themselves and have adapted to their own bargaining circumstances. The Board has been reluctant to fragment an established bargaining structure or to "carve out" groups of employees from such structure. The Board will generally find the appropriate bargaining unit to be that which the incumbent presently represents; although, of course, in appropriate circumstances, a larger unit may also be appropriate and could be granted without raising any concern about fragmentation. Usually, however, a "raiding union" must "take" what the incumbent union has.

Similarly, the Board made the following observation in *Ontario Hydro*, [1980] OLRB Rep. June 882 at page 895:

Where parties have established the viability of a bargaining unit through actual bargaining and where the history of such bargaining has been relatively satisfactory, this Board ought not to encourage fragmentation. Moreover, in these cases, the Board is not dealing with employees who are unrepresented by a trade union. Thus, more concern can be given to the most viable unit from a collective bargaining viewpoint without the risk of impeding the initial organization of employees attempting to engage in bargaining.

43. The Board has however made it clear that the Board's displacement policy and the aversion to fragmentation are subject to exceptions. The Board in the *Ontario Hydro* decision cited above continued at page 895:

But the principle cannot be without its exceptions. Section 48 [now 62] of the Act clearly envisages displacement applications which are less extensive than pre-existing bargaining units. While there is a strong presumption in favour of the incumbent trade union's bargaining unit, the Board is willing to entertain evidence and submissions on why the status quo ought not to be maintained. The incumbent trade union may clearly have failed to represent a distinct and cohesive group adequately, a problem that has sometimes reared its head in the relationship of skilled and unskilled employees. This problem of unsatisfactory representation may be combined with a capacity in the employer to tolerate somewhat greater fragmentation, *particularly if the smaller unit sought can meet the principles of appropriateness generally applied to certification cases.* [emphasis added]

44. In my opinion, those two Board policies are not inconsistent. Rather the Board's approach to determining the appropriate bargaining unit in a displacement application is an

exception to the Board's usual approach in finding an applicant's proposed bargaining unit, provided it is an appropriate bargaining unit, is the appropriate bargaining unit even if it is not the most appropriate bargaining unit.

45. While I am not prepared to find the Board's decision in *AGI Traffic Technology Inc.* is wrong as the applicants urge me to do, I am of the view that the facts considered by the Board in that case are significantly different from the facts in this case. Assuming without accepting the Board's conclusion in *AGI Traffic Technology Inc.* that the Board has the discretion to determine an appropriate bargaining unit that differs from the bargaining unit deemed appropriate by section 158(2) of the Act, I am satisfied that the Board's displacement policy does not preclude the applicants from seeking to represent the employees in the bargaining units they propose.

46. The Board has adopted its displacement policy to ensure a stable labour relations framework that has been established through collective bargaining ought not to be disrupted except where compelling circumstances warrant the Board doing so. The responding party and intervenor agree the bargaining units proposed by the applicants are appropriate as they must given the language of section 158(2) of the Act. There can be more than one appropriate bargaining unit, particularly in a displacement situation, and in this proceeding the Board must determine which ones ought to be adopted.

47. The issue therefore is which bargaining units should the Board determine is the appropriate bargaining unit in each of these three certification applications? In *AGI Traffic Technology Inc.* Local 353 of the IBEW held bargaining rights for a province wide bargaining unit of electricians. IBEW Local 586 was seeking to carve a smaller geographic area out of that province wide bargaining unit. The Board refused to permit Local 586 to do so because the smaller unit the applicant local was seeking would fragment the existing bargaining pattern for electricians that was established when the Board certified Local 353 for a province wide electrician bargaining unit.

48. Although the Board in *AGI Traffic Technology Inc.* recognized that section 158(2) deemed the unit Local 586 was seeking to represent appropriate, it placed greater weight on the Board's displacement policy rather than on the statutory direction that deemed the bargaining unit proposed by Local 586 "to be a unit of employees appropriate for collective bargaining." Ascribing greater weight to the Board's displacement policy rather than to the statutory provision deeming the applicant's bargaining unit to be an appropriate bargaining unit appears to be inconsistent with the approach taken by the Board in several decisions that arose out of what is now section 158 of the Act. For example, the Board in *Aero Block and Precast Ltd.*, [1984] OLRB Rep. September 1166 wrote at page 1170:

16. There is no dispute between the parties that this is an application made pursuant to section 144(1) [now section 158(1)] of the Act in spite of the diversity and novelty of their arguments.

17. That being the case, the holding in the *Graham* decision, *supra*, [Clarence H. Graham Construction Limited, [1981] OLRB Rep. Sept. 1195]

subsequently confirmed in the *Duron Ottawa* decision, *supra*, [*Duron Ottawa Ltd.*, [1983] OLRB Rep. Oct. 1639] that the requirements of section 144(1) of the Act take precedent [sic] over the Board's displacement policy, applies to this application.

49. The applicants pointed out that one of the factors that gives primacy to the displacement policy was described by the Board in *Bestview Holdings Limited*, [1983] OLRB Rep. February 185 at paragraph 15:

To these considerations, a final one may be added: the importance of certainty and predictability in the processing of representation applications. It is in the interests of all parties, including an applicant union, to know with some certainty the bargaining unit configuration which the Board will likely find to be appropriate. It is that group of employees which a raiding union must seek to organize, and within which it must establish majority support. The practical value of the rule that a raiding union must usually take the bargaining unit as it finds it, is that it clearly defines the relevant employee grouping for organizing purposes. If the Board were to readily depart from this approach, there would be no such certainty; and, the prospect that temporary minority dissatisfactions could be translated into fragmentation of an established unit, would simply encourage inter union rivalry and complicate the litigation where one union is seeking to displace another. Thus, there are real practical and administrative advantages to the rule that the existing bargaining structure should generally be preserved.

The applicants submit the factor of certainty does not support the application of the displacement policy in this case as section 158(2) provides that certainty by establishing what an appropriate bargaining unit is.

50. The applicants also pointed out that Local 586 in the *AGI Traffic Technology Inc.* case relied exclusively on section 158(2) to make its argument. The Board noted that at paragraph 22 when it wrote:

However, on the facts which these parties placed before us, none of the criteria which might support the carving out of the smaller unit are established. In this respect Local 586 bases its argument in support of the smaller unit entirely on the fact that this unit is, by virtue of the statute, an appropriate bargaining unit, and since this is the unit that it as the applicant has chosen to apply for, the smaller unit should be found to be the appropriate unit for the purposes of this application. We do not agree.

In this case the applicants contend that even if section 158(2) does not end the enquiry, there are many facts that support the carving out of their smaller units and they do not rely only on section 158(2) in their argument.

51. In my view it is significant that the incumbent's bargaining unit was an "all employee" bargaining unit. The responding party and intervenor have already accepted that the applicants

are entitled to carve out bargaining units representing their respective trade or craft. That factor alone distinguishes this case from *AGI Traffic Technology Inc.* Moreover, employers in the construction industry that engage in a variety of work involving different skilled trades often have a number of different bargaining agents representing their employees. It is also quite significant that the employees the applicants seek to represent were formally employed by Aecon. After the responding party obtained the contract for the work that Aecon had been doing for Bell Canada, those same employees who had been represented by the applicants began working for the responding party. Although some of the responding party's employees from other areas have from time to time been assigned to work in the geographic areas where the applicants are seeking certification it is clear that the majority of the responding party's employees working in those areas were hired by the responding party to do the work they had been doing when employed by Aecon.

52. The Board in *Ontario Hydro, supra* described some of the factors that would prompt the Board to permit a carve out in a displacement application:

This problem of unsatisfactory representation may be combined with a capacity in the employer to tolerate somewhat greater fragmentation, particularly if the smaller unit sought can meet the principles of appropriateness generally applied to certification cases.

53. Since section 158(2) of the Act deems the units the applicants seek to be appropriate greater fragmentation ought to be tolerated because those bargaining units are appropriate. Finally, the applicants relied on the failure of the intervenor to take any steps to undertake active representation of the employees the applicants seek to represent as an additional basis for finding that the carve out of a smaller geographic area outweighs the Board's general policy in displacement applications.

54. The bargaining units the applicants seek to represent are appropriate for collective bargaining by virtue of section 158(2) of the Act. The bargaining units proposed by the responding party and intervenor are also appropriate in view of the Board's long standing approach to displacement applications.

55. While the Board's displacement policy is a significant factor weighing against the applicants' position, I am persuaded that the bargaining units the applicants propose are the appropriate bargaining units in the circumstances of this proceeding, having regard first to section 158(2) of the Act and the Board's usual approach in certification proceedings which is to accept the bargaining unit proposed by an applicant as the appropriate bargaining unit if the applicant's proposed bargaining unit is in fact found to be appropriate for collective bargaining. The Board succinctly set out that practice in *Stevensville Lawn Service Inc.*, 2010 CanLII 55576 (ON LRB); [2010] OLRD No. 3781 at paragraph 5:

Either bargaining unit is appropriate. The Board has often said that a union need not demonstrate that it represent the most appropriate bargaining unit but only an appropriate bargaining unit. The choice remains essentially with the

union unless the employer can demonstrate that the unit sought by the union would create undue labour relations harm.

If an employer could demonstrate "that the unit sought by the union would create undue labour relations harm" then it is clear the unit proposed by the union would not be an appropriate bargaining unit. Given that the bargaining units proposed by the applicants are deemed appropriate by section 158(2) of the Act, then whether those units "would create undue labour relations harm" is not in my opinion a material consideration.

56. In any event, I am satisfied that the circumstances in which the Board does permit a "carve out" in a displacement application exist in this case. Those circumstances include the historical context that gave rise to the employment of many of the individuals the applicants seek to represent, the fact that the intervenor's existing province wide all employee bargaining unit is being fragmented in any event by the craft or trade carve outs sought by the applicants and accepted by the intervenor and responding party, and the intervenor's failure to take any active steps to represent those employees.

57. The intervenor's submission that its members would not be able to work in the areas the applicants seek to include in their bargaining units does not outweigh the factors that favour the Board finding the bargaining units proposed by the applicants are appropriate in this proceeding. As noted earlier, the Board does not require a trade union applying for certification under section 158 of the Act to include within its proposed bargaining unit all unrepresented employees or the employees in all areas where the employer was working on the application date. See, for example, *Harold's Demolition and Recycling*, [2001] OLRD No. 2947, in which the Board stated at paragraph 23:

There is no requirement under the Act for a trade union to apply for a bargaining unit which includes more than one geographic area even if the employer has employees working in a different geographic area which would fall outside of the bargaining unit.

See also *Dagmar Construction Limited*, [1987] OLRB Rep. April 480 and *Belting Cement Construction Limited*, [1989] OLRB Rep. July 709. The situation posited by the intervenor can arise any time a construction trade union obtains bargaining rights in one area when an employer has employees who work in other areas. If an employer wants to assign employees to work in the area where the union holds bargaining rights that employer must deal with that situation. In any event that issue can be the subject of collective bargaining between the responding party and the applicants. Thus, the fact that there may be some difficulty for employees who do not normally work within a bargaining unit assigned to do work within the scope of the bargaining unit is not, in my view, a material consideration when determining the description of the appropriate bargaining unit in an application made under section 158(2) of the Act.

58. In the result, the Board finds the bargaining units proposed by the applicants are the appropriate bargaining units in these three applications.

BOARD FILE NO. 3450-11-R

59. The Board finds that all construction labourers in the employ of the responding party in all sectors of the construction industry other than the industrial, commercial and institutional sector in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville save and except non-working foremen and persons above the rank of non-working foreman constitutes a unit of employees of the responding party appropriate for collective bargaining.

BOARD FILE NO. 3451-11-R

60. The Board finds that all construction labourers in the employ of the responding party in all sectors of the construction industry other than the industrial, commercial and institutional sector in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, the County of Renfrew, the Regional Municipality of Ottawa-Carleton, the United Counties of Prescott and Russell, the geographic Townships of Elizabethtown, Augusta and Edwardsburg and all lands south thereof in the United Counties of Leeds and Grenville and the United Counties of Stormont, Dundas and Glengarry save and except non-working foremen and persons above the rank of non-working foreman constitutes a unit of employees of the responding party appropriate for collective bargaining.

BOARD FILE NO. 3481-11-R

61. The Board finds that all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of the responding party in all sectors of the construction industry other than the industrial, commercial and institutional sector in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, the County of Lanark, the United Counties of Leeds and Grenville, the County of Renfrew, the Regional Municipality of Ottawa-Carleton, the United Counties of Prescott and Russell, the County of Lennox and Addington, the County of Frontenac and the United Counties of Stormont, Dundas and Glengarry save and except non-working foremen and persons above the rank of non-working foreman constitutes a unit of employees of the responding party appropriate for collective bargaining.

62. Representation votes were conducted in all three of these applications but the ballots were segregated and the ballot boxes were sealed pending the Board's determination of the bargaining unit descriptions.

63. These three applications are referred to the Manager of Field Services to arrange for the parties to meet with a Labour Relations Officer to count the ballots cast by the employees in the bargaining units.

64. The Board understood from the parties that in Board File No. 3450-11-R the list and composition of the bargaining unit were agreed. There were five employees at work in the bargaining unit on the application date and those five employees were all eligible to cast ballots in the representation vote.

65. It also appears that there were challenges to four of the persons who cast ballots in the representation vote held in respect of Board File No. 3451-11-R. Whether those four challenges are material to the disposition of that matter can be addressed by the parties when they meet with the Labour Relations Officer appointed to open the ballot boxes and count the ballots.

66. It also appears there were challenges made with respect to the list of employees in Board File No. 3481-11-R. The applicant in that application sought to add four names to the list and did not challenge anyone the responding party had placed on the list. Whether those four individuals cast ballots and if so, whether the challenges are material to the disposition of the matter can also be addressed by the parties when they meet with the Labour Relations Officer appointed to open the ballot boxes and count the ballots.

67. At the last day of hearing of this matter the Board had fixed December 17, 2012 as the next day of hearing if it became necessary for the Board to hear evidence and further submissions with respect to the description of the bargaining units in these three applications. In light of the Board's determination of the bargaining unit descriptions in these three applications, the hearing that had been scheduled for December 17, 2012 need not proceed. That December 17, 2012 hearing is now cancelled.

68. This panel of the Board remains seized with determining any other issues that arise in connection with counting of the ballots, the challenges, if any, and the final disposition of these three applications.

4003-11-G International Brotherhood of Electrical Workers, Local 1687, Applicant v. **Johnson Controls Ltd.**, Responding Party

Construction Industry Grievance – The IBEW grieved the assignment of electrical lighting upgrade work to a non-union contractor, arguing that the work at issue was construction and not maintenance – The Board considered the reasons for the work: (1) to save energy, as well as energy and maintenance costs; (2) to reduce inventory; (3) to comply with recent government regulations and industry standards; and (4) to obtain rebates and incentives for energy savings – The Board distinguished the recent ruling in *Electro Instal* and found that the wholesale replacement of a considerable number of components and fixtures, as well as the addition of new reflectors, produced an

“alteration” of the lighting system to bring the work within the definition of construction – The system can now create the same amount of illumination using half the energy, and can operate twice as long for the same amount of electricity – Grievance allowed

BEFORE: *Diane L. Gee*, Vice-Chair.

APPEARANCES: *Ron Lebi* and *Bruce McNamara* for the applicant; *Richard Nixon* and *Deborah Nesbitt* for the responding party.

DECISION OF THE BOARD: September 17, 2012

1. This matter is a referral of a grievance to the Board pursuant to section 133 of the *Labour Relations Act, 1995* (the “Act”). The International Brotherhood of Electrical Workers, Local 1687 (the “Union”) alleges that Johnson Controls Ltd. (“Johnson Controls”) is in violation of the Principal Agreement between the Electrical Contractors Association of Ontario and the International Brotherhood of Electrical Workers and the IBEW CCO (the “Principal Agreement”) in respect of work subcontracted by Johnson Controls to Marnoch Electrical Services Inc. (“Marnoch”) and performed at the manufacturing facility of Georgia Pacific LLC (“Georgia Pacific”) located in Englehart, Ontario (the “Englehart facility”).

Issue

2. Johnson Controls asserts that the work in issue is not work in the construction industry.

Process

3. When this matter came on for hearing, it was apparent that there were few facts in dispute between the parties. Accordingly, the Board directed each party to file a “Statement of Facts” setting out the facts upon which it relies in support of its position. There were no material differences between the Statement of Facts filed by the Union and the Statement of Facts filed by Johnson Controls and accordingly there was no need for the Board to hear *viva voce* evidence. Argument was made orally before the Board.

Facts

4. Johnson Controls was retained by Georgia Pacific to conduct an audit of the lighting system in the Englehart facility. At the conclusion of such audit Johnson Controls provided Georgia Pacific with a document entitled Lighting Upgrade Project Overview (“Overview”). The Overview indicated that, if lighting retrofit work as identified in the Overview was performed, Georgia Pacific would be able to reduce its energy consumption from 3,739,503 kwh to 1,869,563 kwh per year (a 50% reduction). The Overview estimated that the work would result in a reduction in electricity costs from \$322,447.00 to \$158,950.00 per year. The cost of the work proposed was \$592,895.00. The work was estimated to pay for itself in 3.12 years.

5. Georgia Pacific entered into an agreement with Johnson Controls for the performance of the lighting retrofit work. Johnson Controls in turn entered into an agreement with Marnoch pursuant to which Marnoch would supply all of the labour, products, tools, machinery and equipment necessary to perform the work.
6. Johnson Controls states that there were four reasons why the lighting retrofit work was performed at the Englehart facility. First, it was performed in order to save energy, energy costs and maintenance costs. As indicated above, Georgia Pacific's energy costs will be reduced in half. Maintenance savings will be achieved by the installation of new lighting products that will enjoy a longer life than the products they replace.
7. The second reason was to reduce inventory. The lighting retrofit work will result in a reduction in the number of different lamps and ballasts used in the Englehart facility and thus reduce the number of different products Georgia Pacific will be required to keep in inventory.
8. The third reason for the performance of the lighting retrofit work was to comply with government regulations and industry standards. As of July 2012, a government imposed ban on the manufacture of inefficient T12 fluorescent lamps came into effect. The fixtures in the Englehart facility that used the energy inefficient T12 lamps had to be converted to fixtures that use a T8 lamp. In addition, since 2006, the *Canada Electric Code Part I*, C22.1-12 (the "Code"), which is an industry safety standard for electrical installations that is adopted by reference by the *Ontario Electrical Safety Code* (Ontario Regulation 164/99), has required all newly installed fluorescent luminaries of a specific type to be provided with a "disconnecting means". The requirement does not apply to existing installations; however, the Electrical Safety Association has recommended that such devices be installed during maintenance activities. The purpose of the installation of a "disconnecting means" is to allow an electrician working on the luminaire to easily connect or disconnect power to the luminaire without the need to expose bare wires. The disconnecting means enhances the safe replacement, maintenance and operation of ballasts or fluorescent light fixtures. The type of "disconnecting means" installed at the Englehart facility is a Power Plug Luminaire Disconnect ("PPLD").
9. The final reason for the performance of the work was to obtain utility rebates and incentives for energy savings. The Overview states that Georgia Pacific would receive \$75,121.00 in utility rebates and incentives.
10. The lighting system at the Englehart facility consisted of older, less efficient fluorescent and metal halide light fixtures. The lighting retrofit work required retrofitting most of the existing light fixtures. Work was performed on a total of 1861 light fixtures. This work involved: the replacement of 839 fixtures; the conversion of 668 T12 fluorescent lamps to T8 fluorescent lamps; the replacement of 22 exit signs with incandescent lamps with new LED exit signs; the replacement of 64 occupancy sensors with PIR and Ultrasonic occupancy sensors; the replacement of 1230 magnetic ballasts with high efficiency electronic ballasts. Further, the work performed involved replacing 160 broken prismatic lenses; replacing 284 existing reflectors; and installing 313 new reflectors.

11. In addition to the work described above 964 PPLDs were installed.

12. The work performed did not involve moving electrical boxes, running conduit or pulling wire. None of the work performed was complicated. All of the work was performed while the plant was operational.

Submissions of the Union

13. The Union relies on *Toronto Community Housing Corporation and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46*, a decision of Arbitrator Petryshen (a former Vice-Chair of the Board) dated January 26, 2004 ("*TCHC*"). The issue in *TCHC* was whether the replacement of fully functioning 13 litre toilets with new technologically improved six litre toilets for the purpose of saving water and reducing energy costs was construction work. The work involved was not complicated. On average it took an installer 45 minutes to an hour to replace the older toilet with the new toilet. The union asserted that the work was construction work as the purpose of the work was to conserve water and reduce costs and the result of the work was a more efficient and more environmentally friendly drainage system. In support of the position that the work was not construction industry work, the Toronto Civic Employees' Union, Local 416 (the union representing the employees engaged in maintenance work) argued that the replacement of the toilets did not result in the alteration of or an addition to the sanitary drainage system and that replacing a toilet with a more efficient model does not result in a different system.

14. Arbitrator Petryshen reviewed the leading Board authorities on the distinction between construction and maintenance beginning at page 8 of his decision. Following such review Arbitrator Petryshen summarized the jurisprudence and the enquiry he was to engage in as follows:

In determining whether the work in relation to an existing system is construction or maintenance, one question the Board asks is whether the work sustains or maintains the system. Another question it asks is whether the work on the system contributes to replacing a system which has ceased to function or adds to a system to increase its capacity. The work is maintenance work if it sustains or maintains an existing system or, in other words, maintenance work ensures that an existing system operates as it was designed to operate. The work is construction if, in effect, it replaces the existing system or adds capacity to the system. Perhaps another way to assess the nature of the work is to ask whether the work on the system has left one with essentially the same system or whether the result is a different system, either because the former system has been replaced or added to. Although it is unavoidable to ask such questions to give some direction to the enquiry, I agree with the view that it is important to focus on the factual context. That focus is on the nature of the disputed work, including the purpose of the work, and the impact of the work on the system or facility.

Arbitrator Petryshen then went on to consider the nature and purpose of the work in issue before him:

... Is it appropriate to characterize this work as simply the replacement of a minor component of a system which results in no addition to that system? In my view, this would be an incorrect characterization of the work in this instance. Although a toilet is a relatively small part of a sanitary drainage system, it is nonetheless a major component of the system. Representing the visible portion of the system, a toilet performs one of the basic functions of the sanitary drainage system. It is the fixture which collects human waste and initiates the process of removing waste material from the building by using water. As the evidence in this case demonstrates, the type of toilet used in a system can have a significant impact on the operation of the system. Whether or not the replacement of a component results in an addition to a system very much depends on the particular facts. In this case, the older toilets are replaced with a technologically enhanced model which uses significantly less water. Given the impact on the system, this is not a context where one can assert that one toilet is simply being replaced by another. Replacing all the older toilets in a building with the technologically enhanced six litre flush models does result in an addition to the system.

15. Beginning at the top of page 13, Arbitrator Petryshen concludes as follows:

The toilets being replaced at these Projects were not broken and they could have been used for many years to meet the requirements of the existing sanitary drainage system. Replacing the older toilets with the six litre flush model resulted in a system which operated differently, using half the water per flush than the former system. The replacement of toilets in this instance was not intended to sustain or maintain the existing system. Instead, the objective for replacing all of the toilets at the Projects was to upgrade or improve the sanitary drainage system in the buildings. The upgraded system at each Project is more efficient and is clearly a different system when compared to the former system which utilized the thirteen litre flush toilets. As part of the context it is worth noting that each Project required the services of eight employees for a number of weeks and the cost of each Project was not insignificant. Based on the purpose and the particular context in this case, it is my conclusion that the TCHC engaged in construction work by altering the buildings when it replaced all of the older toilets with the six litre toilets at the Projects.

16. The Union argues that the facts of the instant case are analogous to those in *TCHC*. In the instant case, the ballasts and fixtures that were replaced were not broken nor were they replaced in order to preserve or sustain the lighting system. Rather, they were replaced for the purpose of improving the efficiency of the lighting system. The Union argues that the fact that the work resulted in the same lighting being provided with half the energy is sufficient to establish that there has been an alteration to the system resulting in the work being work in the construction industry.

17. Knowing that the decision was relied upon by Johnson Controls in support of its position, the Union then turned to the Board's decision in *Electro Instal Corporation*, [2010] CanLII 59615 (ON LRB) ("*Electro Instal*"). In *Electro Instal*, the Board considered whether a project described as lighting retrofit work was repair work (which is included in construction industry work) or maintenance work. On the facts of that case, work was performed on over 1,200 lighting fixtures. Magnetic ballasts were replaced by electronic ballasts, lamps (light bulbs) and sockets were replaced and fixture lenses were cleaned. The Board found that the work involved replacing only internal components of the light fixtures with no resulting change to the system. The change from the magnetic ballast to electronic ballast was found to have involved "some saving in electric consumption but not sufficient from the customer's perspective to justify the expenditure." The Board concluded that the work "did not change the functioning of the system but assisted in preserving its functioning" and was thus maintenance work.

18. The Union argues that the facts of the *Electro Instal* decision are not analogous to the facts before me. The Union submits that the *Electro Instal* case dealt only with the replacement of ballasts and lamps (components of a lighting fixture) whereas the instant case deals with the replacement of fixtures and the creation of a new system that produced the same amount of light using half the power. In addition, the instant case includes a host of changes not made in the *Electro Instal* case such as the addition of reflectors and PPLDs and the conversion of fixtures. Further, the Union submits that the issue in the *Electro Instal* decision was whether the work performed was repair or maintenance. In the instant matter, the Union does not argue that the work was repair work. The Union argues that that work amounts to an "alteration" to a building and is thus work in the construction industry.

19. The Union takes issue with the Board's determination in *Electro Instal* to the effect that the decision of the Board in *Relamping Services Canada Limited*, [2005] OLRB Rep. Jan./Feb. 145 ("*Relamping*") was not determinative. *Relamping* concerned an appeal of an order under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended (the "OHSA"). The appellant was engaged in retrofitting over 1,000 light fixtures at a retail store which involved changing the ballasts and the lamps. The work was performed to make the fixtures more energy efficient. An inspector found the appellant to be a "constructor" as defined in the OHSA. The appellant argued that it was not a constructor and it was not engaged in a "construction project". The Board found the work to be construction work based on the fact that the work was integral to the building; the magnitude of the project; the tools and equipment used; and the purposes of the OHSA. The definition of "construction" in the OHSA is broader than that in the Act. The Union argues, however, that, for the purposes of the instant case, the relevant words are the same. Both statutes include the alteration of a building in the definition of construction.

20. Lastly, the Union refers to a decision issued on April 27, 1993 by Referee Robert Blair, then Chair of the Office of Adjudication, involving a dispute under the *Employment Standards Act*, R.S.O. 1990, c. E.14, as amended (the "ESA") between 966566 Ontario Inc. operating as Luminex Lighting Solutions and two former employees who were claiming termination pay ("*Luminex*"). The employer resisted the claim on the basis that the claimants were not entitled to termination pay because they were covered by the construction exemption to the termination pay provisions of the ESA. The exemption in question relieved employers of the

obligation to pay termination pay to a person employed in, amongst other things, the alteration of a building at the site.

21. The *Luminex* decision describes the work performed by the two claimants as follows:

The Employer designs and installs energy-efficient lighting systems. The work which the claimants did involved the dismantling of existing light fixtures in commercial premises, the replacement of ballast, the relocation of sockets, addition of reflective material, and related tasks. Typically this might involve the fixture appearing identical from the outside, but employing only two fluorescent bulbs instead of four, at substantial energy savings to the customer.

22. Referee Blair gave the following short reasons for his decision that the work in issue was covered by the construction exemption:

I cannot find this work was merely maintenance. In essence, an entirely new lighting system was installed in the customer's premises. Although it looked the same afterwards, and retained certain components, in essence what was being installed was entirely new lighting fixtures. I have no difficulty in concluding that these installation projects were construction projects.

23. The Union argues that, when faced with the different results in *Electro Instal* versus *Relamping* and *Luminex*, the Board should prefer the result in the latter two cases. Further, the Union argues that the Board should strive to reach consistent determinations under the OHSA, ESA and the Act.

24. The Union argues that this case is not simply about the replacement of ballasts and lamps. Rather, the Union argues, a large number of fixtures were replaced and a large number of new components (PPLDs and reflectors) were added. The Union argues that, even if there was no "alteration" made to the system, additions were made to the system and that amounts to construction work.

25. The Union argues that the system has been altered due to the fact that, following completion of the work, it is more efficient, conforms to the Code and can be maintained in a safer and easier manner than before. The Union submits that the lenses over the lamps were replaced because they were broken. Entire fixtures were replaced as were sensors and exit signs. The work was done under an Electrical Safety Permit by a licensed electrical contractor. Considering the context, purpose and nature of the work, the Union argues that it is work in the construction industry.

Submissions of Johnston [sic] Controls

26. In the submission of Johnson Controls the onus in this matter is on the Union to establish that the work in issue is construction work. In addition, relying on *Sault Ste. Marie (City)*, [2002] O.L.R.D. No. 3326, Johnson Controls asserts that the onus is on the Union to

provide very convincing reasons why the Board should not follow its earlier decision in *Electro Instal*. Johnson Controls submits that the Union has failed to discharge that onus.

27. In the alternative, relying on *Master Insulators Assn. of Ontario Inc.*, [1980] OLRB Rep. Oct. 1477; *Delta Catalytic Industrial Services Ltd.*, [2001] CanLII 16924 (ON LRB) ("*Delta Catalytic*") and *Electro Instal*, Johnson Controls submits that all of the work in issue in this case is maintenance work.

28. Johnson Controls argues that the *Electro Instal* decision is determinative of this matter. *Electro Instal* was decided by a three person panel of the Board; it was a unanimous decision; and it is the most recent decision involving lighting retrofit work. Johnson Controls submits that, notwithstanding that the *Relamping* and *Luminex* decisions were written prior to the *Electro Instal* decision, the Board did not follow them.

29. In the submission of Johnson Controls, the facts of *Electro Instal* are analogous to those of the instant case. As in the instant case, no conduit was involved; no wire was pulled; and no electrical box was moved. The work was performed during normal working hours. The work performed involved removing magnetic ballasts and replacing them with electronic ballasts. Magnetic ballasts and electronic ballasts perform the same function. Sockets and tubes or lamps were replaced in the *Electro Instal* case just as they were in the instant matter. Johnson Controls argues that the facts of *Electro Instal* indicate that 10% of the fixtures were not working and some of the ballasts were leaking or burned out which suggests that the facts of *Electro Instal* were weaker than the facts of the instant matter where all of the components replaced were in working order.

30. Counsel for Johnson Controls notes that the obligation to install PPLDs on new installations arose in 2006 and that the work performed by *Electro Instal* was performed after that date. As such, Johnson Controls argues the Board ought to infer that *Electro Instal* installed PPLDs notwithstanding that no reference to such is made in the Board's decision.

31. Referring to a quote from *Delta Catalytic* set out at the top of page 5 of *Electro Instal*, Johnson argues that the Board must look at the purpose for which the work was performed. In the instant case, Johnson Controls argues, the work was performed to reduce energy use and reduce the need to replace lamps.

32. Turning to *Luminex*, Johnson Controls argues that the decision is very brief with very little analysis. It is 19 years old and was not decided by the Board nor does it consider the definition of construction in the Act. The *Luminex* decision involved the relocation of sockets which was not work performed in the instant matter. Johnson Controls notes that *Luminex* was decided before *Electro Instal* but the Board did not even mention the *Luminex* decision in *Electro Instal*. Johnson Controls thus argues that it ought not to be followed in the instant matter.

33. Johnson Controls notes that the *TCHC* decision is an unreported arbitral award and is not a decision of the Board.

34. Turning to *Relamping*, Johnson Controls argues that it was rejected by the Board in *Electro Instal*. Further, Johnson Controls submits that the definition of construction under consideration in *Relamping* is different from that contained in the Act and the objects of the OHSA differ from those of the Act. It is argued that the facts are distinguishable as the work in *Relamping* was performed while the store was closed. Finally, Johnson Controls submits that achieving cost efficiencies had to have been one of the reasons why the work was done in *Relamping*.

35. Johnson Controls argues that the *Electro Instal* decision is the most recent reported decision of the Board on the issue of whether lighting retrofit work is construction work. Johnson Controls submits that the facts of the *Electro Instal* case are almost identical to the facts of the instant matter. It is argued that decisions of the Board are reported in order that parties can figure out their labour relations. Employers, Johnson Controls argues, should be able to rely on Board decisions to make informed business decisions. Johnson Controls submits that it had every right to read *Electro Instal* and conclude that lighting retrofit work is not construction work. There must be very compelling reasons for the Board not to follow the *Electro Instal* case which are not present in this matter.

Analysis and Decision

36. Section 1(1) of the Act defines construction industry as follows:

“construction industry” means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site.

37. The applicant argues that the work performed in this case resulted in an alteration to the building and hence is work in the construction industry.

38. The largest part of the work performed in this case involved the replacement of a considerable number of fixtures, sensors, ballasts, reflectors, lenses and lamps as well the addition of new reflectors. This portion of the work had the result of decreasing the lighting system’s energy consumption. I will refer to this work as the “energy efficiency work”. A smaller portion of the work consisted of installing PPLDs with the result that new components have been added to the lighting system and the lighting system is now safer and easier to maintain. I will refer to this work as the “PPLD installation work.”

39. One of the issues that I must determine is whether the fact that the energy efficiency work resulted in the lighting system using half the energy that it previously required to produce the same amount of illumination amounts to an “alteration” of the lighting system such that the energy efficiency work is work in the construction industry.

40. Surprisingly, there is very little jurisprudence directly on point. There is a vast amount of case law that stands for the proposition that “maintenance” can include the

replacement of parts with technologically advanced parts. There is also a vast amount of case law that says work that adds to, improves, reconfigures, increases capacity or creates a different operating system is construction work (see: *Delta Catalytic, supra* and cases referred to therein.) There is, however, aside from the *TCHC* decision of Arbitrator Petryshen, little case law that discusses whether work that changes the efficiency of a system, without impacting on its performance, is work in the construction industry.

41. The following quote from *Briecan Const. Limited*, [1989] OLRB Rep. May 417 ("*Briecan*"), set out at paragraph 12 of *Electro Instal* decision relied upon by Johnson Controls, is one of the few cases that speaks to the issue:

The additions and modifications that were made during the shutdown clearly were done to improve the cooling system, conserve valuable water resources and facilitate easier maintenance on the new meters without having to shut off the gas. All of the work performed in connection with the rebricking or restoring of the furnace, [whether] demolition, repair or new construction, is construction work as defined by the Act.

42. Johnson Controls urges the Board to read between the lines of the *Electro Instal* decision and infer that the work performed in that case resulted in energy efficiencies and future ease of maintenance. Johnson Controls argues that, based on the time period during which the work at issue in *Electro Instal* was performed, it must have included the installation of PPLDs. Johnson Controls also argues that energy cost savings must have been a motivating factor for the performance of the work in *Electro Instal*. Having assumed such facts, Johnson Controls argues that the *Electro Instal* decision is directly on point.

43. I decline to infer the facts urged upon me by Johnson Controls. The *Electro Instal* decision does not refer to PPLDs at all and, with respect to energy savings, the *Electro Instal* decision states that the change from magnetic ballasts to electronic ballasts involved "some saving in electronic consumption but not sufficient from the customer's perspective to justify the expenditure." Hence, it would appear that only modest energy savings were achieved as a result of the work performed in *Electro Instal*.

44. The parties confined the authorities that they relied upon to those that I have referred to above. They did not burden the Board with stacks of cases on the distinction between construction and maintenance. I am grateful for their forbearance but would also suggest that no other cases were relied upon because there is a line of demarcation in the jurisprudence that is clear and obvious. The Board's case law draws a distinction between: (1) work that is performed on an existing system for the purpose of preserving the operation of the system; and (2) work that is performed for the purpose of enlarging, improving, reconfiguring, or expanding the capacity of the system. Work that is undertaken to maintain or sustain a system is not considered to be construction work even where such work includes replacing components of the system with updated components. In contrast, work that enlarges, improves, reconfigures, or expands the capacity of the system is viewed as an "alteration" to the system. Maintenance work preserves the existing state of the system. Construction work alters or changes the system. As such, I

concur with Arbitrator Petryshen that "whether the work on the system has left one with essentially the same system or whether the result is a different system" is one of the factors to be considered when determining whether work is within the construction industry or not.

45. The work performed in *Electro Instal* did not result in a system that operated on half the energy that it had previously required nor did it result in a system that was easier and safer to maintain. In *Electro Instal* the Board concluded that the work "did not change the functioning of the system but assisted in preserving its functioning..." Those are not the facts before me and accordingly I do not consider *Electro Instal* to be determinative of the matter before me.

46. On the facts before me, the energy efficiency work involved the wholesale replacement of a vast number of components and fixtures. The result of the energy efficiency work is that the lighting system can now create the same amount of illumination with half the energy. The system can now operate twice as long for the same amount of electricity. In my view, the result of this alteration (requiring half the input to produce the same output) is no different from an alteration to an operating system that increases the system's operating capacity that the Board has long held to amount to work in the construction industry. If altering a system to double its output is construction work, I see no basis upon which to find that altering a system to require half the input to produce the same amount of output is not also construction work. The work, in both cases, "altered" or changed the system. Accordingly, I find that the energy efficiency work had the effect of altering the lighting system and is work in the construction industry.

47. It is my further determination that the PPLD installation work is also construction industry work. The installation of the PPLDs was not necessary to maintain or sustain the lighting system. The PPLDs were installed to make future maintenance of the lighting system easier and safer. Further, the lighting system did not previously have any PPLDs and as such the PPLD installation work was not the replacement of existing components or the installation of additional pre-existing components. Rather, the installation of the PPLDs amounted to the wholesale introduction of a new component to the lighting system for the first time. I further consider it relevant that the PPLDs were not installed during the course of maintenance activity; they were installed at the same time and as part of the same work package as work that I have found to be construction industry work.

48. For the reasons stated above, I find all of the work in issue in this matter to be work in the construction industry. The grievance is hereby granted.

49. In the event the parties are unable to reach agreement on any remaining issues they are to advise the Registrar as to a mutually agreeable date on which they would like this matter relisted for hearing. If no such request is received within three months of the date of this decision, this matter will be automatically terminated with no further notice to the parties.

50. I am seized.

2449-11-ES Maplehurst Farms Limited o/a Maplehurst Farms, Applicant v. Kevin Sayeau and Director of Employment Standards, Responding Parties

Employment Standards – Discharge – Wilful Misconduct – The employer sought review of an order to pay termination pay and unpaid wages to a former employee who worked and lived on the employer's farm as a labourer – The employee had signed an agreement to pay any hydro costs in excess of \$100 per month while residing on the employer's farm and to have such an amount deducted from his pay – As required by Section 13(5) of the ESA, the authorization provided a formula from which a specific amount could be calculated – The deduction from wages was upheld but the amount was varied – On the termination issue, the Board found the employee had engaged in wilful misconduct by being rough with the employer's cows and destructive to the farming equipment and machinery – In addition, the employee was abusive to the employer's spouse – The Board stated that the test was whether the behaviour was so egregious that the employer could not be expected to permit the employee to work during the notice period; in other words, was the employee's presence in the workplace during the notice period "untenable"? – The Board found the employee's aggressive and inappropriate conduct on the farm made it unreasonable to have expected the Employer to permit him to work out his notice period – The employee was not entitled to termination pay – Order to Pay varied

APPEARANCES: *Brian Matthie* and *Brenda Matthie* for the applicant; *Kevin W. Sayeau* and *Joyce Serson* for Kevin Sayeau; no one appearing for the Director of Employment Standards.

BEFORE: *Ian Anderson*, Vice-Chair.

DECISION OF THE BOARD: September 7, 2012

1. This is an application under section 116 of the *Employment Standards Act, 2000*. Maplehurst Farms Ltd. seeks review of an order to pay its former employee Kevin Sayeau termination pay and unpaid wages in relation to his last week's wages and deductions made from prior earnings.

2. The facts are not in dispute unless otherwise stated.

3. Maplehurst Farms Ltd. is a dairy farm. It is owned and operated by Brian Matthie and Brenda Matthie. Kevin Sayeau was employed as a labourer on the farm for the period March 16, 2009 until April 20, 2011.

The Final Week's Wages

4. There is no dispute that Mr. Sayeau's final week's wages were withheld in order to be applied to an outstanding debt owed by Mr. Sayeau to Maplehurst Farms. The question, therefore, is the propriety of that deduction.

Deductions From Wages

5. While employed on the farm, Mr. Sayeau and his family lived in a house located on the farm. Mr. Sayeau signed an agreement "to pay any hydro costs in excess of \$100 per month as long as I reside at the farm house at [address omitted] and am allowing such costs to be deducted from my pay at Maplehurst Farms Ltd." Mr. Matthie explained that the house had a separate hydro meter. In addition to the house, the meter recorded power supplied for farm use to a few other electrical devices: a light in one barn; a submersible water pump which supplied water for the house but also could be used to supply water to one of the barns; a nine watt light bulb in another barn, which was on all the time, and a heating line on the water feed from the ground to that barn, which was only plugged in occasionally; and power for a light bulb in yet another barn that was turned on only occasionally. The \$100 per month deduction from the hydro bill was to allow for the power consumed for farm use.

6. The relevant provisions of the Act read as follows:

13.(1) An employer shall not withhold wages payable to an employee, make a deduction from an employee's wages or cause the employee to return his or her wages to the employer unless authorized to do so under this section.

...

(3) An employer may withhold or make a deduction from an employee's wages or cause the employee to return them with the employee's written authorization.

...

- (5) Subsection (3) does not apply if,
 - (a) the employee's authorization does not refer to a specific amount or provide a formula from which a specific amount may be calculated;
 - (b) the employee's wages were withheld, deducted or required to be returned,
 - (i) because of faulty work,
 - (ii) because the employer had a cash shortage, lost property or had property stolen and a person other than the employee had access to the cash or property, or
 - (iii) under any prescribed conditions; or
 - (c) the employee's wages were required to be returned and those wages were the subject of an order under this Act.

7. The deductions made from Mr. Sayeau's wages in relation to the hydro usage were pursuant to his written authorization. The authorization does not refer to a specific amount. In my view, however, the authorization does provide a formula from which a specific amount may be calculated: Mr. Sayeau authorized the deduction of an amount equivalent to the hydro supplied to the farm house he was occupying, less \$100 for farm use. In my view, therefore, they were permitted by the Act. I note as well that Mr. Sayeau does not challenge the legality of the deductions.

8. The officer concluded that there had been an over deduction of \$4,334.92 from Mr. Sayeau's wages. Mr. Matthie provided records (not before the officer), including copies of hydro bills, at the hearing which showed that during the course of Mr. Sayeau's employment there had been \$15,319.99 in hydro charges. After allowing \$2,500 for farm use, the amount owing by Mr. Sayeau was \$12,819.99. Of this, Maplehurst Farms had deducted \$11,959.83 from Mr. Sayeau's wages, including \$332.79 from his wages for his last week of work.

9. Mr. Sayeau does not challenge the accuracy of Maplehurst Farms' records. He states, however, that the amount that he was charged was too high. The hydro bills averaged \$600 per month. Mr. Sayeau's share averaged \$500 per month. He states that he knows other families of four who live in the country and pay less for hydro. He thinks the estimate for the amount of hydro supplied to farm use was too low. He states that one of the barns was not properly wired and that the live stock which drank from the water supplied by the submersible pump would drink over 5 gallons of water a day. He also points to the hydro bill dated August 12, 2009. The bill was for \$2,075.86, significantly more than other bills, and more than the bill for the subsequent August, which is \$207.97. The August 2009 was based on an actual meter reading on July 23, 2009. Both Mr. Sayeau and Mr. Matthie recall a subsequent conversation with the meter reader in which the meter reader stated that there had been an error in a previous meter reading which was captured in July, 2009. Mr. Sayeau argues that the amount that he was charged for hydro should be reduced as a result.

10. Mr. Matthie testified that he and his family had lived in the farm house for 8 or 9 years immediately prior to Mr. Sayeau. During this time the hydro bill was typically \$150 to \$200 per month. He remembered being shocked one month when the bill was \$360. He states that there is another person living in that farm house now with two kids and the hydro bills average \$150 per month. Mr. Matthie stated that the farm house had a wood stove for heating, but that when he drove by the farm house on cold winter days there would be no smoke coming from the chimney and the window would be open. He also notes that he had not charged Mr. Sayeau for hydro use for the first month that he occupied the farm house.

11. Part of the higher average is a product of the bill for July 2009 which is based upon an earlier misreading of the meter. I note that if the amount of the August 2010 bill is substituted for the August 2009 bill, the average monthly hydro bill during Mr. Sayeau's stay would still be \$525. On the evidence before me, I am satisfied that this high monthly average of the hydro bills during Mr. Sayeau's occupancy of the farm house is a product of his own power usage. Accordingly, pursuant to the authorization which Mr. Sayeau signed, Maplehurst was entitled to make deductions from his wages in relation to this usage.

12. Section 111 provides that an order may be made for wages that became due and owing at most twelve months before the complaint was filed. The July 2009 hydro bill falls outside of this period of time. The effect, however, of deductions in relation to it continued to be felt throughout Mr. Sayeau's period of employment. This is because the employer attempted to reduce the impact of the large hydro bills which Mr. Sayeau was running up by not deducting the full amount of larger bills as they were incurred but instead deducting first \$600 per month and later, as there continued to be a persistent outstanding indebtedness, \$800 per month from his pay.

13. As of Mr. Sayeau's April 20, 2011 pay, \$436.12 remained the balance owing. The employer applied all of Mr. Sayeau's pay from his last week's wages (i.e. the net amount of \$332.79) to this outstanding balance, leaving \$103.33 owing by Mr. Sayeau. The hydro bills in relation to Mr. Sayeau's occupancy of the farm house, however, continued to accrue after that date: an additional \$756.83 owing by Mr. Sayeau, for a total indebtedness of \$860.16. An adjustment to this amount must be made for the July 2009 bill. Based on the evidence before me I consider it appropriate to use the amount charged for use in July 2010 as a proxy for actual use in July 2009. Accordingly, Mr. Sayeau is entitled to a credit of \$1,867.89 (\$2,075.86 less \$207.97). In the result I conclude that \$1,007.73 (\$1,867.89 less \$860.16) of the deductions from Mr. Sayeau's wages was not done in accordance with his written authorization. He is entitled to this amount as unpaid wages.

Termination Pay

14. Mr. Sayeau's employment came to an end on April 20, 2011. The circumstances were as follows.

15. Maplehurst Farms Ltd. has a herd of 100 to 120 dairy cows. Mr. Sayeau was far from an ideal employee. He was rough with the cows, which results in decreased milk production. He threw a chain saw across the workshop, rendering it inoperative. He would get into fights with other employees, and Mr. and Mrs. Matthie, using profanity. However, during the last several months of Mr. Sayeau's employment, Mr. Matthie was recovering from a broken ankle. It takes four people to milk the cows, a fifth person is required to cover days off by one of the four, and it appears that it is difficult to get help. Mr. Matthie, therefore, was prepared to keep Mr. Sayeau on. However, on Monday April 18, 2011 two things happened. First, Mr. Matthie observed Mr. Sayeau driving a brand new tractor erratically, at full throttle and grinding gears. Mr. Matthie testified that if he could have run, he would have run out and kicked Mr. Sayeau off the farm that day. Second, Mr. Sayeau called Ms. Matthie a "F***** C*****"

16. Mr. Matthie decided he needed to say something to Mr. Sayeau. On the morning of Wednesday April 20, Mr. Matthie and Ms. Matthie were working in the milking barn. Mr. Sayeau arrived. As he approached, Mr. Matthie said "it looks like we'll have to let you go". Mr. Sayeau did not respond. He just walked by and out the other end of the milking barn. He did not come back to work on the Thursday or the Friday. Mr. and Ms. Matthie decided to just leave him alone until the Monday. When Mr. Sayeau did not return on the Monday, they asked the

bookkeeper to prepare a Record of Employment. At the hearing, Mr. Matthie stated that he realized that they had not fired Mr. Sayeau, rather Mr. Sayeau had quit.

17. Mr. Sayeau, for his part, did not materially dispute any of the facts set out above. I would add that having observed the highly agitated and aggressive way in which Mr. Sayeau gave his evidence, I accept Mr. Matthie's description of Mr. Sayeau's past behaviour as being entirely in character. Mr. Sayeau however, took the position that he did not quit. Rather, in his view when an employer tells an employee "we'll have to let you go", that means that the employee has been fired.

18. In my view, Mr. Matthie terminated Mr. Sayeau. This is consistent with documents created by or under direction of Mr. Matthie closer in time to the end of Mr. Sayeau's employment. The Record of Employment, dated May 4, 2011, gives the reason for its issuance as "M", or dismissal. The Employer Information Form filed with the Ministry of Labour in response to Mr. Sayeau's claim also makes it clear that Maplehurst Farms terminated Mr. Sayeau's employment.

19. Section 54 of the Act provides employees who have been continuously employed for three months or more with a right to notice of termination or termination pay under the Act. Section 55 provides that prescribed employees are not entitled to termination pay. Regulation 288/01 sets out the employees who are prescribed as not entitled to receive termination pay. Section 2(1) contains a prescription from entitlement to termination pay whose application to this case must be considered:

2. (1) The following employees are prescribed for the purposes of section 55 of the Act as employees who are not entitled to notice of termination or termination pay under Part XV of the Act:

...

3. An employee who has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.

20. As observed in *Wal-Mart Canada*, [2002] OLRB Rep. March/April 275, in a claim for termination or severance pay, the Board has no power to reverse the employer's decision to terminate an individual's employment: the concept of "just cause" is not engaged. Nor is the Board determining how much notice an individual is entitled to receive: once the period of the individual's employment is established, the Act establishes universal minimum standards as to the amount of termination and severance pay owing for that period of employment.

21. This limited role of the Board further informs the type of conduct which is required in order to disentitle an employee from termination or severance pay under the Act. As the Board stated in *Wal-Mart Canada* in relation to the term "wilful misconduct":

47. The word "misconduct" alone is defined by the Oxford Modern English Dictionary (2d ed.) as "improper or unprofessional conduct". That is, it implies some knowledge or sense in the actor of a failure to behave in accordance with a standard. The word "wilful" puts a greater emphasis on conscious, deliberate, intended action which is heedless of any consequences. That is, the Act requires such egregious behaviour that the employee should not be entitled to a period of notice of termination under the Act.

22. In applying this test in *Wal-Mart Canada*, the Board asked itself was the behaviour "so egregious that Wal-Mart could not be expected to permit him to work another two weeks before his termination?" The Board concluded that it was not, stating that there was nothing in his conduct which would have made the individual's presence in the workplace for the period of the notice "untenable". These considerations resulted in the formulation of the following test in *Flamborough Springs Inc.*, [2008] O.E.S.A.D. No. 618 at paragraph 8:

One measure of whether an employee's offence is sufficiently serious to exclude the employee from entitlement to termination pay is whether it would have been unreasonable to expect the employer to permit the employee to work out his or her notice period under the Act.

23. On the facts of this case, there can be no question that Mr. Sayeau engaged in wilful misconduct. In my view, in light of Mr. Sayeau's aggressive and inappropriate conduct on the farm, it would not be reasonable to have expected Maplehurst Farms Ltd. to permit him to work out his period of notice under the Act. Accordingly, I find that he is not entitled to termination pay.

Disposition

24. For the reasons given, the order to pay is varied. The Director of Employment Standards is directed to pay out the \$6,805.50 held in trust as follows:

- | | |
|---|------------|
| a. To Maplehurst Farms Ltd.: | \$5,697.00 |
| b. To Kevin Sayeau: | \$1,007.73 |
| c. Retained by the Director as
the statutory administration fee: | \$100.77 |

0357-09-R; 0359-09-U UNITE HERE, Applicant v. Novotel Canada Inc., Accor Canada Inc. and Novotel Mississauga o/a Hotel Novotel Toronto Mississauga Centre, Responding Parties

Certification – Unfair Labour Practice – UNITE HERE complained that Novotel had interfered with its organizing campaign in four ways: (1) departmental "roundtable discussions" amounted to captive audience meetings during which the employer made threats to the employees' job security; (2) the virtual lay-off of the union's main organizer was meant to send a message to employees; (3) Novotel's practice of encouraging employees

to report union activity amounted to surveillance and prevented employees from expressing their true wishes about the union at the vote; and (4) Novotel's provision of false or misleading information to employees equally precluded the employees from revealing their true wishes at the vote - The Board heard no direct evidence that Novotel directed, asked or encouraged employees to inform on their co-workers; management listened to the reports and kept track of them, but there was no evidence that employees knew of the information gathering - The Board found that Novotel generated false or misleading information regarding the employees' ability to retain their family doctors, or their ability to continue participating in the hotel's RRSP programs; although there was ample time between the dissemination of this information and the representation vote for the union to correct the misinformation, the union failed to do so; nonetheless, Novotel's conduct violated the Act - The employer's witnesses gave conflicting testimony regarding the diminution of the organizer's hours, and the concomitant creation of two full-time positions, neither of which was offered to the more senior employee/organizer - The Board found it was patently evident to all Novotel staff that the employee at issue was the chief organizer - Novotel was unable to persuade the Board that its conduct with respect to this employee, and the shift creation/changes was free of anti-union animus - Finally, the Board found that the employer's various discussions of job security, taken individually, might not cross the lines of free speech, but cumulatively constituted coercion, undue influence and interference - Remedial certification ordered - Compensation for the discharged organizer, equivalent to her weekly hours of work, from her last day of work to the date of the decision

BEFORE: *Brian McLean*, Alternate Chair.

APPEARANCES: *Stephen Krashinsky, David Sanders, Christine Davies, Heather Ann McConnell* appearing for the applicant; *Michael Sherrard, Elizabeth Duncan and T. Michael Chandler* appearing for the responding party.

DECISION OF THE BOARD: September 27, 2012

1. Board File No. 0357-09-R is an application for certification. Board File No. 0359-09-U is an application under section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") which alleges a breach of sections 70, 72 and 76 of the Act ("the ULP").

2. These applications have a long and difficult history. They concern events which occurred in 2008 and 2009. In this regard, the union's organizing campaign which is the subject of these applications commenced in October 2008 and the application for certification was filed on May 4, 2009. A representation vote was held on May 11, 2009 and a majority of employees voted against representation by the union. The union alleges in its ULP and otherwise that the representation vote did not reveal the true wishes of the employees. It seeks to be certified under section 11 of the Act.

3. As originally filed (including particulars and new allegations filed later) the ULP alleged numerous acts of wrongdoing. However, over the course of the proceedings the

allegations were substantially pared down. Nevertheless, the hearing took approximately 25 days to complete over more than two years. The union called only one witness – Rekha Sharma, a part time server in the employer's restaurant who was the chief in-house union organizer. The employer (the "Hotel") called several major witnesses including Didier Dolivet, the Hotel's General Manager, Selena Louzado, the Hotel's Human Resources Director, Bechir ("Ben") Ghali, the Hotel's Assistant Food and Beverage Manager from late 2007 to March 2009 (and the acting Food and Beverage Manager from March until the date of the vote) and the Hotel's Food and Beverage manager until March 2009, Tom Stasiuk. The Hotel also called several other minor witnesses.

4. Part of the case involves an allegation that the Hotel terminated Ms. Sharma's employment (by creating two new full time positions and giving them to employees below Ms. Sharma on the seniority list) as a result of her efforts to organize on behalf of the union. Accordingly, in part of the case, the Hotel bears the onus, by virtue of section 96 (5) of the Act, of establishing that its conduct was free of anti-union motive. As a result, the Hotel agreed to lead its evidence first. The Board heard considerable evidence relating to activities at the Hotel for the entire period of October 2008 to May 2009. However, it is not necessary to describe events in detail. Instead, I will describe the evidence as it relates to the main issues of union concern. Before doing that I will discuss the union organizing campaign in general, including the major events of the campaign.

The Union Organizing Campaign and Background

5. The responding party employer is a hotel. It is part of a large chain of hotels, Novotel Hotels, which is owned by Accor, a company based in Paris, France. Novotel owns or manages three hotels in the Toronto Area including Toronto Centre, whose employees are represented by the applicant, Novotel North York, whose employees the applicant is also trying to organize, and Novotel Mississauga, which is the subject of this application.

6. The union and Accor have had a relationship for some time. It is not necessary for me to detail this relationship, but for purposes which will become clear, it is important to note that Accor and the union have agreed at the highest level that Accor will not oppose the efforts of the union to organize the employees in hotels owned by Accor.

7. It appears that the union has been trying to organize the Hotel's employees for many years. The Union is also trying to organize the employees of Accor at other hotels.

8. The organizing campaign which commenced in the Fall of 2008 was, as we shall see, a very aggressive one. The union began to sign employees to membership cards in the workplace. It also commenced visiting employees at their homes. Ms. Sharma testified that she engaged in hundreds of home visits over the period of the campaign. It appears that not all employees were enthralled by the prospect of being represented by a union or pleased with the union's organizing tactics. Perhaps because of this, the Hotel's management learned of the organizing campaign almost at its inception. From the start of the campaign employees reported to Ms. Louzado, Mr. Dolivet and other members of the Hotel's management that the union was attempting to have

employees sign membership cards. There were also complaints made to Hotel management about the union's home visits. Employees wondered how it was that the union came to know their addresses and telephone numbers. The Hotel denied responsibility for giving the union this information. Numerous employees spoke to Ms. Louzado and Mr. Dolivet and other members of management about the union's efforts. More will be said about this later.

9. The Hotel had, prior to the union's organizing drive, a number of ways it communicated with employees. These included:

- 1) Letters or memorandums to employees;
- 2) General staff meetings, which most staff attended and which were designed to provide information of a general nature (such as training, how the Hotel's business is doing and new developments of a general nature) to all employees;
- 3) "Roundtable Discussions" in which the General Manager of the Hotel, Mr. Dolivet would, in a series of meetings, sit down with a small group of employees in a particular department in the absence of the department manager(s) to discuss issues which were of concern to employees. The Hotel's idea was that there could be a free flow of ideas and information including criticism of the managers. Managers would learn of the results of the roundtable following their conclusion. Ms. Louzado was also present at roundtables. Attendance at roundtables was mandatory for employees at work. However, employees off shift were not expected to come to work to attend a meeting;
- 4) "CLIPS" which are meetings designed to generate anonymous feedback about a department manager in order to assist the manager to improve; and
- 5) Annual performance appraisals which involve the completion of a performance appraisal form by an employee's manager followed by a face to face meeting between the manager and the employee.

Mr. Ghali gave evidence about how he (and presumably other managers) conducted annual performance evaluations. First he completed the evaluation form. He then met with the employee and had the employee's completed form on his computer screen. As he discussed his evaluation with the employee he made modifications to the evaluation on the computer. Generally, these modifications were to improve the evaluation as the employee pointed out things Mr. Ghali might not have considered. He then asked the employee for his/her comments on the evaluation which

he typed in the employee comments portion of the form. The document was then printed and signed by him and the employee.

10. In addition to the communication methods described above, every morning the Hotel held manager's briefings in which Senior Management discussed the day ahead with all of the department managers (which might include assistant managers).

11. On November 12, 2008 Mr. Dolivet held an open meeting with all the staff and listened to their concerns. On November 14, 2008 there was a conference call held with members of the Hotel senior managers and senior management of Accor Canada. The purpose of the call was to discuss the Hotels' response to the Union drive. The notes reflect the following advice from Accor senior management:

Do meetings in small groups

Use whatever facts you can share—like pay cheques, changing shifts, videos, etc.

Do a sheet of the differences between union and non-union to show to the team [the employees]

Use as much the time to be with the people and connect with them.

Productivity is a concern and this will need to be decided.

Meeting with the managers twice a day to stay on track with the information.

(emphasis added)

12. Following the conference call Ms. Louzado spoke to the managers and among other directors told them to "become vocal about the positives we have in this place as a team – enlist the benefits of being non-union very vocally" and "Remind the newcomers that the union are a protection for the seniors [most senior employees] and cannot assist you in any way" The Hotel also told its managers to "talk to the senior pro management team [anti-union employees] and solicit their assistance to influence the team members"

13. On November 15 and 17, 2008 the Hotel held the first roundtable meetings since the start of the union's organizing drive. The union was an important subject of the discussions. Ms. Louzado prepared speaking notes for Mr. Dolivet to refer to as he addressed the groups. The speaking notes compared the alleged advantages of remaining non union versus being unionized. Mr. Dolivet did not read the notes verbatim but used them as a guide. Although there was some evidence led about what actually was said in the meetings, in the end the parties agreed that the speaker's notes are generally an accurate reflection of Mr. Dolivet's comments. These speaker's notes state in relevant part:

The way we are today....
(November 2008)

Non Union Hotels

(Benefits)

- **You keep the same doctor, dentists and eye doctor, all medical professionals that you have always had for the last as many years. You do not have to change your doctor because of your benefit plan. You have complete flexibility.**

With Union:

They assign a doctor in the East, West, North and South and you need to go only to those doctors, dentists, eye doctor etc.

...

Non Union Hotels

(Personal Obligation Days)

- **Today each full time Employee can enjoy 5 personal obligation days per calendar year with no strings attached except adding it to vacation.**
- **These days can be used to do personal things like settle your mortgage with the bank, go to your child's school etc. Whatever you need to do it is at your own decision.**

With Union:

The first day is not paid and you get paid only for the second day as a SICK day. Which means each time you get sick you need to be at home for 2 days and you only get paid for day two by the Union.

Non Union Hotels

(Payments to the Union)

- **Today you take home your full paycheck. What ever hours you work you take home that complete paycheck minus the government taxes.**

With Union:

You pay \$19/- each pay period.
You pay \$38/- each Month
You pay \$456/- each year

This goes to a Union because they are a business.
(Plus every year they can increase their dues and you have no say.)

Non Union Hotels
(RRSP)

- **RRSP today the company gives you the option of a RRSP that you can invest in whatever way you want. You can use this additional money to put a down payment for a house or other commitments.**

With Union:

This is an option you will loose (sic). The company does not invest this into your RRSP when you are on a Union plan.

...

Non Union Hotels
(Number of check outs)

- **Number of Check outs:
We do 13 checkouts you drop one room
You travel 3 floors or more your drop one room**

With Union:

The Union has negotiated the same for our Downtown Hotel. So if they are telling you that they can negotiate different ask them to get the President to sign and give it to you.

Non Union Hotels
(Discipline)

- **The steps we take are**
- **Coaching**
- **Verbal**
- **Written**
- **Suspension**

With Union:

They use the same steps we do.

Non Union Hotels
(Job security)

- Your job is secure as long as we have business. When business is good we get more hours. Our guests sign our paycheck by returning to us because of our service and our product.

Our guests are our job security.

With Union:

If the Union tells you they can give you job security it is promise they cannot keep. Ask the president to sign and give you in writing that he will secure your job. Look around you and see the different companies and hotels that are unionized and when they have to lay off or close that still happens.

14. In addition to the items described above, Mr. Dolivet also discussed the fact that the Hotel and employees had worked together in the past to face various challenges and asked for a chance to "please to do this together again". He also stated that with a union, employees "would no longer have a voice of their own" and that security under the Hotel and union were both the same.

15. Ms. Louzado, who prepared the speaker's notes, intended to compare the benefits employees enjoyed at Novotel Mississauga with those which applied to employees under the collective agreement with the applicant at Novotel Toronto Centre. Despite the fact that Ms. Louzado is an experienced human resources professional and had actually worked in human resources at the unionized Novotel Toronto Centre, it is obvious there are significant errors in the notes and that therefore incorrect information was given to employees. For example, there was nothing in the Toronto Centre collective agreement (or any collective agreement) which would compel employees to change doctors, and the unionized employees at Novotel Toronto Centre were not assigned a doctor. Moreover, the description of the RRSP issue was also erroneous. Employees were not told the Hotel's existing RRSP scheme could be agreed to in negotiations, only that they would lose it. The Hotel's statements were also misleading because at Toronto Centre, the employees had a pension plan rather than an RRSP plan. Of course, the discipline processes are also not the same since the employees at Toronto Centre could challenge discipline through arbitration whereas the Mississauga employees did not have that right. Ms. Louzado testified she honestly believed that the Toronto Centre collective agreement contained the "benefits" she described, but made mistakes which she only became aware of at the hearing.

16. Mr. Dolivet and Ms. Louzado testified they were trying to tell the truth and to put into perspective the information which they were receiving from the union which they believed to be false.

17. In mid-December 2008 the union arranged to have a large number of its supporters (not Novotel employees) attend at the lobby of the Hotel and ask to see Mr. Dolivet. Ms. Louzado met the group in the lobby and asked them to leave. They refused to do so. Mr. Dolivet met the group in the lobby and invited Peter Tabuns, a Member of Provincial Parliament who was with the group, to his office to discuss the matter. Mr. Tabuns refused unless others were also invited. Thereafter Mr. Dolivet again asked the group to leave. They refused. Mr.

Dolivet then advised the Hotel was calling the police and the Hotel did so. The group left before the police arrived. Mr. Dolivet was upset both because the group had occupied the Hotel's lobby and because the individuals took pictures of him and filmed him against his wishes, images which were later posted online. Mr. Dolivet later conveyed his anger to upper management in an email: "The whole aggressive game is now going too far. They are now using new tactics that are totally unethical and an invasion of my privacy"

18. In January 2009 the Hotel held further roundtable meetings. Ms. Sharma attended part way through one of them (for the food and beverage department employees) and raised issues regarding her own rate of pay, which she believed was incorrect, and hours of work for another employee. These issues were addressed by the Hotel to the satisfaction of Ms. Sharma and later in a flyer the union trumpeted its achievement in obtaining benefits for workers. It was Mr. Dolivet's and Ms. Louzado's perception that other employees were upset that Ms. Sharma spoke at the roundtable and some of them left while she was speaking. Mr. Dolivet revealed that at roundtables held with housekeeping, employees also raised issues which appeared to be instigated by the union drive.

19. On March 1, 2009 Ms. Sharma and five other employees attended at Ms. Louzado's office and spoke to Ms. Louzado. They said that the recent roundtables were good but they still had a lot of concerns. The six employees requested that the Hotel hold a general staff meeting the next week so that their concerns could be addressed. Ms. Louzado declined the request and advised the employees that general staff meetings were not for that purpose. Instead, she and Mr. Dolivet testified the Hotel held general staff meetings when it wished to address some of the Hotel's concerns or give information (such as business results) which affected the Hotel as a whole.

20. In their examination-in-chief and cross-examination Ms. Louzado and Mr. Dolivet testified that this concern about the purposes of general staff meetings was the real and only reason why the request for a general staff meeting had been denied. However, in cross-examination they were shown an email from Mr. Dolivet to upper management which explained that the employees' request for a general staff meeting had been declined, at least in part, so as not to give the union a platform to raise issues and ask questions. To his credit, Mr. Dolivet acknowledged that his testimony had not been accurate.

21. During the period of January to March 2009, the union continued to encourage employees to sign union membership cards. However, by this time the momentum of card signings had slowed considerably. By decision dated March 9, 2010, I advised the parties that the cards filed with the application bore the following dates:

November 2008

5 th	6 cards
6	8 cards
7	7 cards
8	4 cards

9 8 cards
10 1 cards
11 4 cards
12 3 cards
13 5 cards
14 1 cards
15 2 cards
16 2 cards
27 1 cards
28 2 cards

December 2008

14th 1 card
21 1 card

January 2009

15th 1 card
16 1 card

March 2009

3rd 1 card
12 1 card

April 2009

25th 1 card

May 2009

2nd 1 card
3 1 card.

22. It is useful at this stage to recall that the Hotel conducted roundtables among all the employees on Saturday November 15, 2008 and Monday November 17, 2008. As can be seen the volume of card signings dropped steeply following these meetings where employees were provided with false information.

23. On March 21, 2009 Ms. Sharma was given her annual performance review by Mr. Ghali. In accordance with the process described above, Mr. Ghali initially filled out the performance review form and it was largely positive (Mr. Ghali testified that Ms. Sharma was an excellent employee and a very impressive person). The two met to discuss her performance and, as a consequence of that discussion, Mr. Ghali increased some of the scores in the performance appraisal and toned down some of the criticisms of her work.

24. There are a few parts of the performance appraisal which are relevant to the matter before me:

- (i) Ms. Sharma and Mr. Ghali discussed the importance of ensuring airline crew lounges were properly stocked. This task was to be completed at the start of shift. These lounges were established by the Hotel as a way to attract airline business. It was successful in doing so. While the airline business provided the Hotel with a low per room income, it guaranteed a steady flow of business;
- (ii) Mr. Ghali noted that Ms. Sharma was "usually available to change schedules if needed – you have been able to work with us on different shifts if we are in difficult situation. Thank you."
- (iii) Ms. Sharma advised that, among other things, her goals and objectives for the future was to shadow a housekeeping head and to shadow "R" to get an idea about other hotels and how they are doing.
- (iv) On the performance appraisal form there is a spot for the employee to make his/her own comments. Ms. Sharma's comments respecting the performance appraisal were:
 - a. I Should have got all (top scores)
 - b. I also love working in this hotel and that if you are giving me a bad grade you cannot get rid of me.
 - c. When is the general staff meeting?
 - d. When do I get to evaluate my managers?
 - e. Thank you so much [Ms. Louzado] and I hope to see you soon.

25. During their meeting regarding the performance review Mr. Ghali did not discuss the subject of creating full-time positions in the food and beverage department. Nor, obviously, was Ms. Sharma asked about her interest in such a position. A new schedule, which included the employees who had been awarded the new full time positions in those shifts normally worked by Ms. Sharma, was posted less than 2 weeks later.

26. On Sunday March 29, 2009 there was an argument between Ms. Sharma and Mr. Ghali concerning whether Ms. Sharma had properly serviced the airline crew lounges. Mr. Ghali did not believe Ms. Sharma had completed the task and was concerned that her deficiencies occurred so soon after they had discussed the issue at her performance evaluation meeting. Later that day Mr. Ghali drafted a written warning as follows:

Written Counseling Acknowledgement

Name: REKHA SHARMA **Date of Incident:** MARCH/29TH/2009

Department: Food and Beverage Dept. **Date of Report:** MARCH/29TH/2009

Details of the incident/ performance and the business reason why this is a serious problem:

I have spoken to Rekha regarding the AIR LINES and we both agree that we have to take care about them more than we did before and that's why I brought it up on her pep done on the march 21-2009 to follow up on the new procedure that we put it in place.

<THESE ITEMS TO BE REFILLED ON DAILY BASIS BY NIGHT AND MORNING ROOM SERVICE FOR THE 3 LOUNGES.>and this needs to be done as soon as you start your shift unless you are busy with room service which was not the case.

I did ask her when I arrived at 8 am if she checked already the lounges or not she said yes.

When I ask the F/O staff if they did give her the keys to get into the lounges they answer no.

So I don't understand how she will get into the rooms without the keys. I had a call this morning from a crew from room 302 at 11am30 received by Katherine in F/O asking for disposable plates I deliver myself and found no spoons either

This has not been done March 20th 2009 and this is the reason for the written warning at this time.

You have been issued this form as a notice that a positive change with regards to the above-indicated problem is required immediately. Future occurrences of this nature will result in further disciplinary action, up to and including discharge.

I have received and understood this notice:

Employee's Signature

27. Mr. Ghali forwarded his draft to Ms. Louzado. Ms. Louzado responded to Mr. Ghali by directing him to conduct a thorough investigation before deciding to discipline as follows:

1. you have to call Rekha and ask her what happened. How did she get into the room. Someone from the Front Desk might have given her the key. Do not assume.

2. once you have asked her how she go and established who gave her the key and why it was not signed off then ask her tell her about your guest complain no spoons no plates etc and ask her to explain.[sic]

3. Tell her that you had just talked to her in her PEP [performance appraisal] about the importance of our quality service etc.

4. After that we can then do the discipline, let me know and I will help you write it out once we have all the information.

Talk to me if you need any further explanation.

28. The letter of written warning was never provided to Ms. Sharma because other events overtook that incident.

29. On March 30, 2009, the union held another rally, this time in front of the Hotel's premises just outside its property. Rekha Sharma was the only employee who participated in the rally and she gave a speech to the crowd, which numbered 100-150 people. Ms. Louzado watched the rally from inside the Hotel but was unable to hear everything. A video of the rally was later posted online.

30. On Saturday April 4, 2009, Ms. Sharma came to the Hotel to work her regular Saturday morning shift in the restaurant. When she arrived, she reviewed her new work schedule which had been posted on the previous Thursday (April 2). This was the first schedule created after her speech at the rally. She learned that she did not have any shifts scheduled for her the next weekend. She also learned from other employees that two part-time employees below her in seniority had been granted full time status and were working her regular shifts. Much more will be discussed below about the reason for the Hotel's decision in this regard.

31. Later that day, there was a series of confrontations between Mr. Ghali and Ms. Sharma which resulted in her receiving a written warning. The union takes the position that her employment was terminated. Again, this is a key part of the application and more will be said about it below.

32. During the course of the day, Ms. Sharma called Ms. Louzado at home and asked why she no longer was scheduled to work shifts. Ms. Louzado responded that the Hotel had promoted two individuals to full-time status due to the business need to have individuals available during both weekdays and weekend.

33. By letter dated April 8, 2009 counsel for the union wrote to the Hotel and demanded that the Hotel reinstate Ms. Sharma to her employment.

34. On April 11th Ms. Sharma met Ms. Louzado, who explained the Hotel's business reasons for promoting two other employees to full-time status. She also explained that Ms. Sharma's employment was not terminated and that she would be scheduled for shifts when the Hotel needed her. Nevertheless, Ms. Sharma was not scheduled for more shifts (except the day of the representation vote) for a considerable period of time.

35. At no time during any of the conversations with Ms. Louzado did Ms. Sharma indicate that she would have accepted a full-time position were it offered to her. Of course, such an offer was never forthcoming.

36. After the meeting with Ms. Louzado on April 11th, Ms. Sharma met a group of other employees in the employee cafeteria. They presented her with a cake that said in icing "Welcome back Rekha. We are united here!!!"

37. Later the Union prepared leaflets which they handed out to employees. On the leaflet was a picture of Ms. Sharma speaking at the rally. The leaflet concluded:

About one week after the rally, Rekha Sharma arrived at work to find out she was off the schedule. She was followed by her supervisor, and later that day, fired.

Because we are strong, we sent a message to the management that Rekha has our support and did not stand alone. The next day, management reversed its position, and now claims that she was only sent home for the day, not fired.

38. On April 22, 2009, a group of union supporters came to the Hotel's lobby. Four employees, including Ms. Sharma, were also present with the group. The group of people were asked to leave but initially refused. The Hotel called the police and the group left the property shortly before the police arrived. The group indicated they were there to discuss Ms. Sharma's situation.

39. In early May the Company conducted another set of roundtables. The discussion at the first few roundtables covered some of the points which were raised in the roundtables in the fall and early spring. Mr. Dolivet thanked employees for their contributions to the business, namely the fact that they were receiving good reviews from guests. The Hotel discussed the fact that Novotel was named one of the fifty "best employers" in a survey. Mr. Dolivet then discussed the Union as follows:

Third Party Activity
(It is your decision and your choice)

- I want to once again address this topic and am [sic] sorry, for those that are bored with it, but the Union is very aggressive and trying very hard to represent you.

- I want to make it clear that this is completely your decision and for us it will be business as usual if we have a union or not. We as a company really like dealing with your [sic] directly because our contract is with you and we have made this hotel successful by doing just that. However, at the end of the day if you decide you want a union we will continue to work together.
- Ask your manager any questions you may have about the clarifications on what the Union has told you. Clarify what anyone tells you.

Job Security –no one not even the company can guarantee hours for you. Our customers are the only ones that can guarantee hours by returning back. Look at the Car companies – all unionized. If they have to cut wages, close down, decrease hours it does because there is no business. Look at the Sheraton downtown – over 46 people are laid off. They are Union. No one but the customer can guarantee jobs.

Increase Salary, reduce work load, give better hours, weekends off, etc. None of this can be done without negotiation. The union and the company will sit and negotiate all these things. The Union can only make promises. They cannot guarantee any of it.

- Letters and visits to the house

Talk about the letters that are coming to your homes and the visits to your home. Someone stole your private information and gave it out to another party. We as the employer will not do that. We have this information to process payroll and contact you for work. However, we empathize that your privacy has been violated and not respected.

Your home is private and what you do there is entirely upto[sic] you. If you feel troubled by anyone it is your free choice to call the police or not open the door. As an employer we cannot do anything for your [sic] outside work this is your own home and your own time, take control of it.

Privacy and Discipline

Talking about privacy, we also want to address some of the letters coming to you about employees like Rekha and Miryam that they were terminated or suspended. You know we do not discuss or share any of this type of information. This is private to the employee and the manager. Would you like me to share what discussion I have with you one on one – with the rest of the team?

All I can tell you at this time is that as a company we have processes in place. Our processes are we talk to the employee, we give verbal disciplines, we give written disciplines, we give suspensions – sometimes 1 day, [sic] 3 days or 5 days. As a company we follow these

processes and many people on our team may have these on file. This is personal to each individual. I can assure you as a company we follow these guidelines. No one gets terminated or disciplined without due process.

Return Cards

Many employees are coming to me and saying they are upset that they signed the cards and that people are worrying them so they signed it just to get someone out of their homes or in front of them. However, if you feel you are [sic] want to take your card back, you do have the right to ask for your card back. Remember it is your personal choice, if you are uncomfortable that you signed the card in a hurry or for the wrong reasons and you want to take your card back, just ask the Union to give it back to you.

Remember you are in charge of your life, try asking for the card back from the people you signed it with. They should give you and don't be afraid to ask after all it is your decision on what you want to do.

Union is looking for your money

Our business is selling rooms to the public and that is what we do. Our sales people go out to get the business and that is how we fill our hotel and that is what gives hours for our team members and makes us successful.

The Union is trying to sell you a package to represent you instead of you dealing with us directly. They want to be the middle person, they want to sell their services to speak for you so you do not speak for yourself

They are so aggressive because they want your money. Now in todays [sic] economy it is better for me to have the money in my pocket than to give it to anyone else. However, it is your choice to choose what you want to do with your money. Whatever is your choice we as a company will support it.

Manage the Truth

Lastly, as a company we can only tell you the truth. We try to make things work and sometimes it may fail, and then we try again on something different and that is the reality.

Some days we have no linen, even though we try we sometimes fail,
some days we have 10 airline checkouts even though we try to make it
sometimes we cannot

some days you travel so many floors

Some days the elevator gets stuck on a certain floor

Some days the laundry does not get delivered

I can go on and on. What I am saying is I know everything is not perfect. I know you put up with a lot of situations on a daily basis. But at the end of the day we try and we always tell you the truth. We make mistakes and when you bring it to our attention we try to fix it. Your managers try very hard to make it right. As a company we stand by the truth we do not lie, which is not what I can say about the Union from the letters that they are sending out.

40. By the middle of this roundtable process on May 4, 2009, the union filed its application for certification. The speakers notes for these meetings included the following:

It is your decision

- The Union has filed to do a secret ballot vote at the Novotel Mississauga on Monday, May 11, 2009
- Timings:
- It is your decision to join a Union if you so desire. Your vote will determine the final decision. Therefore it is really important you come out to vote and make your voice heard.

Achievements

- Over the last 25 years Novotel Mississauga we have had several achievements. The first being our long standing employees. We have several people that have been with us for over 5, 10, 15, 20 and 22 years. This itself speaks volumes. Thank you for your loyalty.
- Secondly over the last few years we have seen several renovations and changes in the way we do business. All this is to ensure we stay consistent with the times and compete for business successfully.
- In these hard economic times we have seen hotels and businesses closing and laying off. With our planning and looking ahead we have been fortunate to get airlines into our hotel that day, are the reason why so many of us have hours. Other hotels are soliciting to try and get airlines today. We have not been in those situations of layoffs or closing down because we have taken some good decisions.
- All our decisions are based on ensuring we are successful in our managing employees, in making our guests happy and in ensuring the return of business.
- We have a good team that works here as a family. Taking care of each other.
- We have renovated most of our rooms
- We have improved our Average Rate and occupancy through the year.
- None of this would be possible without you.

Therefore today, as we stand here on the brink of a decision making day, I ask you to make sure you take the time to make a good decision.

Your Vote is Important

Today, as we stand here on the brink of a decision making day, I ask you to make sure you take the time to make a good decision.

Your vote is important and it is secret to you only. When you go into the booth to sign your vote, it does not matter what you signed on the cards. It is your vote that is really important at this time. It is immaterial of whether you signed a card or not, please make sure you come out to vote.

As a company we like working with you directly as we have done in the past. We feel that keeps our team closer and we are able to work much more effectively.

However, we will respect your decision in whatever way you decide. Just make sure you come out and vote on Monday May 11, 2009 at

41. While the speaker's notes for the earlier roundtables discussed layoffs at the automobile companies, once the vote was announced the reference to the auto companies was reworded and replaced with the paragraph that commences "In these hard economic times we have seen hotels and businesses closing and laying off." The paragraph then continues with the words, "we have not been in these situations of layoffs or closing down because we have taken some good decisions" There was no real explanation at the hearing for the change.

42. At about this time, a group of employees came to Ms. Louzado with a handwritten petition against the union and asked her to type it out for them. She did so. In her evidence, she acknowledged doing this was a mistake.

43. On May 7, 2009, the Hotel sent employees the following letter:

"Monday is an important decision that affects the working lives of all of us!
We at Novotel – have both union and non union hotels and the decision to organize is a highly personal choice that we respect!
We are concerned, however, that you are fully informed before making your choice.

Team members need to make their decision on their own – not based on the views of others – after thoughtful consideration. That is why the election is by Secret Ballot.

No one – not the employer or union – will ever know what you voted.

Whether we have a Union at our hotel is decided by a majority of those who actually vote and cast a ballot! It does not matter if you did or did not sign a card. Your vote is secret. Even if you signed a card, it's not an obligation – you are free to vote any way you want. The vote is your only chance to say: "Yes, I want the union to represent me – or "No, I don't" want the Union to represent me."

Again,

No one will know how you voted.

So, please vote how you believe your work interests will be best served.

I also urge you to discuss this vote with your family as the outcome of this decision not only impacts you but your immediate family as well.

At Novotel, we have made great progress in serving our guests, being competitive in the hotel market where we compete and being a very good place to work! We have done this as a team, working together, listening and responding to concerns we all have.

Today, the business environment is challenging, competition is brutal and team work is essential!

We urge you to vote for the Novotel Team: Vote NO!"

44. On May 11, 2009 the Board conducted the representation vote. The employees voted 50 to 33 against representation by the union (63 individuals had signed applications for union membership). Eight ballots were segregated and not counted. Five of the eight segregated ballots were challenged by the applicant. There were some events on that date about which the union complains. These will be dealt with in detail below.

Credibility

45. Before turning to a description of the main disputes between the parties, it is useful at this stage to discuss the credibility of the various witnesses.

46. In considering the credibility of witnesses I must take into account the fact that much of the hearing of these matters took place a considerable amount of time after the relevant events. It is not surprising that mistakes would be made and such mistakes should not automatically be ascribed to dishonesty. With one or two exceptions, in my view, the Hotel's two main witnesses, Mr. Dolivet and Ms. Louzado, gave credible evidence. The exceptions are however, somewhat glaring. In particular, to give one example, both witnesses testified that the Hotel was not opposing the union's organizing campaign but merely trying to give employees information which they could use to decide whether they wanted a union. This was clearly not factual – the Hotel was vigorously opposing the organizing drive. It was urging employees to vote "no" to the union. Normally, that kind of false testimony would be a damning indictment of the credibility of a witness. However, here it is apparent that it was done for a specific and extraneous purpose – that being to avoid a breach of Accor's high level agreement with the union. This is not to excuse it, but only to say that it does not necessarily render the rest of their testimony less credible.

47. A third crucial employer witness was Tom Stasiuk. He was the Hotel's Food and Beverage Manager until March 17, 2009. As an individual no longer employed with the Hotel at the time of his testimony, and with absolutely no self-interest in this case, I find his testimony entirely credible. He had a good recollection of the significant events which he was involved in and where he could not remember he said so. Where his recollections and evidence differ from any other witness I accept his evidence.

48. The Hotel's fourth significant witness was Mr. Ghali. He was the Assistant Food and Beverage Manager from August 2008 to March 2009. On or about March 18, 2009 he was made the Acting General Manager of the Food and Beverage department after Mr. Stasiuk's departure.

Both before and after this departure he had a significant impact in scheduling employees, including Ms. Sharma, in the Hotel's food and beverage department.

49. Mr. Ghali was, for the most part, an unreliable witness. It seems likely that he made a decision prior to his testimony that he would not admit to anything. He saw nothing; he heard nothing; he knew nothing. He took this stance to the extreme. There were numerous instances of plainly dishonest testimony. To give just one example, he claimed to be unaware of what unions were or even that there was a union organizing campaign at the Hotel during the months of November and December and beyond. Employee witness that followed him was asked in cross-examination about the likelihood of this and each found it unlikely. The union organization drive was a critical aspect of the Hotel's culture. From December 2008 to May 2009 the Hotel had approximately 90 employees in the proposed bargaining unit. There were numerous names of employees referred to in testimony directly or in documents as talking about the union. There were worker/supporter rallies outside and inside the Hotel. Mr. Ghali's testimony, that he did not even know there was an organizing campaign, and never heard about unions, was nonsense. Having said that, for a number of reasons, not all of his testimony can be discounted. I say this because some of the statements he made in testimony were supported by other witnesses whom I do believe; he wrote a note about two of the events; and opposing witnesses were clearly not truthful in certain instances.

50. The only witness for the union was Ms. Sharma. Her credibility needs to be judged in the context of the place of the organizing drive in her life. She is clearly devoted to trade unions, having worked for a union at York University and having worked tirelessly for the applicant. In my view, however, her dedication to the cause meant that she testified with some degree of self-interest. As with some of the major witnesses for the Hotel, her evidence was demonstrated on occasion to be false. Moreover, it appears that, like Mr. Ghali, she breached the Board's witness exclusion order and was then not honest in the way she answered questions about the breach.

Decision

51. Section 11, 70, 72 and 76 of the Act state:

11. (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,

- (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
- (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.

(2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,

- (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
 - (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or
 - (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.
- (3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).
- (4) On an application made under this section, the Board may consider,
- (a) the results of a previous representation vote; and
 - (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

...

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

...

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person

seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or

- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

...

76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

The Campaign

52. The union has several main objections to the anti-union campaign initiated by the Hotel. First, the union asserts the roundtable discussions amounted to captive audience meetings in which the employer made direct and indirect threats to employees' job security if they voted in the union. Second, the union argues that the Hotel's treatment of Ms. Sharma was intended to send a message to employees in addition to her directly. Third, the union argues the Hotel's practice of encouraging employees to report union activity and then receiving such information about the union from employees amounted to surveillance and prevented the true wishes of the employees from being demonstrated by the representation vote. Fourth, the applicant asserts that the employer's provision of false information to employees on subjects that are of great significance to employees meant that their true wishes were not revealed in the vote. I will consider the union's third complaint first.

The Hotel's Acceptance of Information from Employees

53. Prior to the organizing drive the Hotel had an "open-door policy" That is, it was open to the employees to visit any member of management to discuss concerns. As a companion to that policy it was also the Hotel's policy that management such as Mr. Dolivet and Ms. Louzado would routinely circulate throughout the Hotel and informally speak with the employees.

54. Beginning at the start of the organizing drive, employees spoke to Mr. Dolivet and to Ms. Louzado in great numbers. Employees advised management who was signing cards and who was being visited at home and who was doing the visiting. We know much of this because the Hotel's witnesses acknowledged it in evidence and Ms. Louzado kept a log of these activities. There were numerous entries. Typical log entries are as follows:

V mentioned that she met with E and got a sense E was second guessing herself.

A # came to see me that she had a phone call from Union reps ... and two visits from them. She was upset to see them. Told them she is not interested.

A said the names of O, M, H kept coming up again and again.

M told me that - came to see her and ask her if she can talk to the part timers as they are all pulling out for the union. M told her she was not interested however, she said that continue to talk to people and do regular meetings because Didier is able to have an effect on people.

55. The result of the Hotel's practice was that the Hotel believed it had a very good idea about who among the employees were union supporters and who were not. In fact it kept a list of union supporters and those opposed. The list was based on employee reports and the impressions of managers.

56. The union argues that the employees' activities, encouraged by the Hotel, amounted to surveillance and relies on the fact that the Board has always considered surveillance of employees engaged in union organizing activity as among the most egregious forms of employer interference with the right of the employees to form a trade union (see *K-Mart Canada Limited (Peterborough)* [1981] OLRB Rep. Jan 60). The union asserts that management either directed employees to spy on and then inform on their fellow employees or at least tacitly encouraged the reports by receiving them so willingly.

57. There is no direct evidence before me that the Hotel directed or asked employees to inform on their fellow employees about union activity. In fact the allegation was denied by all Hotel witnesses. Nor do I infer, based on the evidence, that there was encouragement of such activities. I am satisfied that members of management simply listened to employees and did nothing to discourage them from providing information about the organizing campaign.

58. To a certain extent, this occurs in nearly every union organizing campaign. In most campaigns, there are employees who oppose the union's organization efforts and tell management about the activities. In fact, this is so expected that the Board may be suspicious about claims by an employer that it was unaware of an organizing campaign that has been ongoing for some period of time.

59. The difference in this case is the extent of the activities which were reported, the number of employees involved and the frequency with which employees made reports to management. Any employer who does not tell employees to stop informing it of the union activity of other employees runs a risk of violating the Act. Nevertheless, it is difficult to find that an employer that simply listens to its employees is violating the Act by doing so, especially if other employees were not aware of the employer's receipt of such information. I decline to make such a finding in the absence of evidence that employees were aware of the employer's information gathering.

False Information

60. I deal next with the union's complaint regarding false information.

61. The Hotel gave the employees false information about a number of important subjects. In this regard, it suggested that employees would have to change doctors if the union were certified. It also suggested they would lose their right to participate in Hotel RRSP programs if they were unionized. These were serious errors. Having said that, this information was given out in roundtable discussions in November, approximately six months before the representation vote was held. The union had plenty of opportunity to correct the information. The provision of such information in this timeline does not by itself lead me to the conclusion, in all these circumstances, that the true wishes of employees were not revealed by the representation vote. Nevertheless, I am satisfied that the provision of significant misinformation, whether deliberately or through gross negligence, on subjects of such importance to employees likely had an impact on the course of the campaign and the vote and interfered with the union contrary to the Act. I consider such impact in the remedy section of this decision.

Rekha Sharma

62. There is no dispute or doubt that Ms. Sharma was the union's main in-house organizer. It is clear that during the six or seven month duration of the union's organizing drive she spent a considerable amount of time on union activities. She was able to do this because she worked part-time at the Hotel, in general working only a four hour shift on each of Saturday and Sunday. I note that in her performance appraisal, the Hotel had commented positively on her flexibility to work extra shifts when needed and she did so occasionally throughout the relevant period.

63. Ms. Sharma was attending classes at York University while she worked at the Hotel. However, staff at York University were on a very lengthy strike during the work period relevant to this matter and the labour dispute meant that her classes were cancelled in the Fall of 2008. Ms. Sharma was also a graduate student assistant, a member of the striking union, and therefore walked the picket line. That strike only concluded January 20, 2009 and Ms. Sharma decided not to finish her classes. She therefore had a considerable amount of time available for union activities.

64. Ms. Sharma's room service tasks included preparing trays, delivering meals to rooms and picking up trays when the guest completed their meal. One of her first required tasks at the start of her shift was to pick up trays left in the hallway the night before. Ms. Sharma was also charged with replenishing the plastic cutlery and other items in the airline crew lounges. If her other tasks were complete, or she was waiting for new room service orders, Ms. Sharma assisted the servers in the restaurant.

65. Before turning to the incidents of which the union complains involving Ms. Sharma it is useful to briefly describe some of the major organizing activities Ms. Sharma participated in:

- i) Home visits and onsite organizing;
- ii) In January she attended a roundtable discussion (the only time she did so) and raised an issue she had about her wage rate and another employee's hours of work;
- iii) She and 4 other employees attended at Ms. Louzado's office and requested that a general staff meeting be held; and
- iv) Union rallies outside and inside the Hotel.

66. One of the union's primary bases for asserting it should be certified pursuant to section 11 of the Act despite losing the representation vote is that Ms. Sharma, its chief in house organizer, was terminated or, at a minimum, lost all her hours. There is no doubt that Ms. Sharma lost her hours. Except for the day of the representation vote when all employees were called into work (every employee on the voters list cast a ballot), Ms. Sharma was scheduled to work for no shifts from April 2009 until the fall of 2009, albeit she was unavailable for work in the summer of that year. Therefore, the Hotel's justification for Ms. Sharma's schedule is central to this case.

67. In principle, the Hotel's position is as follows. There was a worldwide economic crisis in the Fall of 2008. Mr. Dolivet wanted to avoid a "layoff" at all costs and he asked managers to balance hours among employees in order to prevent layoffs. Accordingly, the Hotel did not replace two or three restaurant servers who had quit their employment in 2008. The Hotel had difficulty scheduling as a result of these decisions. In particular, it had difficulty getting employees to cover mid-week shifts. Moreover, the Hotel anticipated (despite the fact the Hotel had been hurt by the economic crisis) that business would pick up in April of 2009, as it usually did at that time of year. The Hotel contemplated it would have difficulty coping with the increase in business (which had in the past occurred in April) with the existing complement of staff. Mr. Dolivet testified that Mr. Stasiuk approached him and advised that he was having difficulty finding employees to work mid-week shifts. He asked for permission to hire new employees. Mr. Dolivet testified that his "requirement was very clear" He asked Mr. Stasiuk to look from within and extend opportunities to existing employees. Mr. Dolivet then said: "I was informed that he extended the opportunities to those individuals and my recollection was that some accepted and one person did not which I recall being Rehka" This occurred to his recollection in January or February 2009.

68. The Hotel prepared "shift availability forms" to determine which of its existing employees could cover off which shifts. On its face the blank form contemplated that employees would complete the form weekly and turn it into management, presumably so the next week's schedule could be completed. However, it appears this was actually never done and most employees only ever completed one or two forms. It is unclear whether all of the employees completed shift availability forms at the time, since the Board did not receive into evidence a form with a January or February date completed by all employees. Mr. Dolivet touched on the subject in an email to his superiors.

A situation occurred this weekend with the employee (Rekha) who took part in the rally 2 weeks ago.

Due to the nature of the incident and where it may lead, I want to inform you so you can be in the loop from day one.

In a nutshell this employee is protesting the fact that we promoted 2 of our part times employees to full time last week to cover the week days we are short staff.

These employees now have more seniority than her as she remained part time, and will take over her shifts that she usually did on weekends.

Before we confirmed the 2 part timers into full time, we went to ask all the part timers early Feb., requesting their availability in writing to see if we could work it out with them.

Those who respond favourable on their availability to work week days and weekends were given the promotion. Rekha was not available and we have her confirmation in writing as we do for the others.

She is now intending to us (sic) this against us as a discriminating practice....

She is supposed to come to see Selina tomorrow afternoon, where Selina will reiterate to her the whole process.

In view of her attitude in public areas in front of guest, she will be given a written warning as well.

We are collecting statement today from other employees who have seen the exchange between her and Ben (Asst F&b).

Thank you

Didier Dolivet
General Manager

69. On February 1, 2009 Ms. Sharma completed a shift availability form which stated:

"Saturday and Sunday until my availability changes."

The form was witnessed by Mr. Ghali. Other employees also completed forms. However, the Hotel was unable to produce all of them at the hearing, including a form filled out at the relevant time by one of the employees who was awarded a full time position.

70. Sometime in March 2009 the Hotel decided to create two full time restaurant server positions. Full time food and beverage employees were expected to be available to work up to

40 hours per week on shifts scheduled throughout the week (both weekdays and weekends). Unlike part-timers, full-time employees were entitled to be covered by the Hotel's benefit plan.

71. The Hotel chose two part-time servers who it understood were available to work weekday shifts. It did not offer one of the full-time positions to Ms. Sharma even though the two employees selected were below her on the part-time seniority list and the Hotel had a practice of offering full-time jobs to part-time employees on the basis of seniority. It also did not post the position in the workplace as it had done previously when some other jobs became open. It also did not speak to Ms. Sharma about the situation at all before the decision, despite the fact that Ms. Sharma had her performance evaluation meeting only days before the change and had worked on the previous weekend.

72. The Hotel's explanation for all of this is that because of Ms. Sharma's indication on the shift availability form and because management was aware Ms. Sharma was a full time student, it "knew" she would not be available to accept a full-time position. The Hotel states that Ms. Sharma's support for the union had nothing to do with its decision-making.

73. The difficulty for the Hotel is that the witnesses called to testify about the decision-making surrounding the creation of the full-time positions all gave different stories about how the process occurred.

74. Ms. Louzado confirmed that the Hotel had trouble scheduling since the start of the New Year. The Hotel had enough staff to cover weekends, but had difficulty covering weekdays. In February of 2009, Mr. Stasiuk asked employees to advise him of their availability through the shift availability forms so he could see how he could "write the schedule" for the business. After Mr. Stasiuk left the Hotel's employ, Mr. Ghali was put in charge on an interim basis and found it even more difficult to schedule. Mr. Dolivet and Ms. Louzado looked at all the people who told them they were available for full-time hours and chose the most senior of those people. The decision affected all of the remaining part-time employees including Ms. Sharma; none received hours thereafter. Ms. Louzado testified that at the time of Ms. Sharma's performance appraisal (March 21, 2009) she was not sure if they needed a full-time employee. Yet twelve days later a new schedule was made and Ms. Sharma had been replaced by part-time employees who were junior to her.

75. Ms. Louzado said that the reason for the introduction of the shift availability forms was to schedule according to the employees' availability. Ms. Sharma was not asked whether her availability had changed because the Hotel believed she was at school, although Ms. Louzado acknowledged the Hotel did not know when her classes were.

76. In cross examination, Ms. Louzado was asked when the decision was made to create the full-time positions and she did not answer the question. Instead she gave evidence about the problems faced by the manager. Later, when asked again, Ms. Louzado said the decision was made by Mr. Dolivet and Mr. Stasiuk but she could not recall the date of a meeting although it could have been around March 23. There is a notation in Ms. Louzado's calendar for March 23

which says "Full Time Posting" but she was not sure what it related to. I note the Hotel does not suggest it made the decision prior to Ms. Sharma's speech at the rally.

77. Ms. Louzado agreed that in hindsight that it would have been good to ask Ms. Sharma at her performance review whether she wanted a full-time job.

78. When Ms Sharma became aware of the removal of her hours she contacted Ms. Louzado by telephone at home. Ms. Louzado advised her that the Hotel had decided to go with full-time employees. As noted above, Ms. Sharma did not suggest she would have accepted the full-time position nor was she asked whether she would.

79. Mr. Dolivet's evidence about the decision-making process was weak. As noted, he testified in examination-in-chief that he and Mr. Stasiuk had a conversation in January or February during which they decided to offer full-time employment to two part time employees. This was done, and to Mr. Dolivet's recollection, Ms. Sharma was offered the position and declined to accept it (the Union objected to this evidence on the basis of hearsay, but I allowed it (subject to weight)). Given Mr. Stasiuk's testimony, Mr. Dolivet's recollection in this regard is clearly faulty. However, Mr. Dolivet also testified that he had not been involved in the decision to create a full-time position and that the decision had been made by Ms. Louzado and Mr. Stasiuk. Mr. Dolivet also testified that he had no discussions with Mr. Ghali about scheduling in the January to April period.

80. Mr. Stasiuk's evidence, which as noted above I accept, confirmed that the Hotel had the concerns that were identified by Mr. Dolivet and Ms. Louzado. That is, that the Hotel did not replace employees who resigned in 2008, that the Hotel was having difficulty finding employees to cover mid-week shifts, and that the Hotel was concerned that if the traditional spring pick up in business occurred the Hotel might be caught short of employees, especially mid-week.

81. Apart from that, Mr. Stasiuk's evidence does not corroborate that given by Mr. Dolivet. Mr. Stasiuk testified that he printed the shift availability form from the Hotel's internal computer system in order to see if they would be able to get through the busy season with the staff they had. Mr. Stasiuk did this in conjunction with Mr. Ghali and Chef Sujoy Mondal. Mr. Stasiuk also advised the staff, including Ms. Sharma, in February 2009, that he wished them to complete the forms. At that meeting he advised that he saw a potential that they would not be able to write the schedule with the current staff, so the Hotel needed to know exactly what shifts employees could work and not work so they could decide if they had enough people on the schedule to cover the shifts. He told Ms. Sharma that she needed to fill out a form. Ms. Sharma told him then what she later wrote on the shift availability form, that at that time she could generally work only Saturdays and Sundays.

82. In his examination-in-chief, Mr. Stasiuk was not asked about the decision to create full-time positions. There was no suggestion he decided to create full time positions or that he had talked to Mr. Dolivet about full time positions. There was also no suggestion that he was dissatisfied with the situation after receiving the shift availability forms or that the indicated

available shifts were insufficient (or sufficient) for him to be able to "write the schedule" going forward.

83. In cross-examination, Mr. Stasiuk testified that he believed his conversation with Ms. Sharma took place in January or early February. Mr. Stasiuk acknowledged that Ms. Sharma occasionally worked mid-week shifts when asked to do so, and he was aware that the employees of York University, where she went to school, were on strike.

84. Union counsel pointed out that there was no mention in his evidence in examination-in-chief that there might be full-time jobs available. He answered that all he knew was that business would likely be going up and management needed to know they could write the schedule with the current staff. He agreed that Ms. Sharma's form which states "Saturdays and Sundays until my availability changes" meant that in the future she might be able to work more shifts and that his take was that if a full time position did open up in the future he would have asked whether her availability had changed.

85. The final individual to give direct evidence about this issue was Mr. Ghali. He and Mr. Stasiuk shared responsibility for scheduling F&B employees prior to Mr. Stasiuk's departure from the Hotel. Thereafter, Mr. Ghali scheduled alone. He scheduled with reference to the occupancy of the Hotel and employees who were available for shifts. He first scheduled full-time employees and then filled in the gaps with part-timers.

86. Mr. Ghali recalled that Mr. Stasiuk asked him at the end of January to have all of the part-time employees complete a shift availability form. He explained that there was a form for Maritza, one of the part-time employers who was given a full-time job, dated June 2009 (and not for January 2009 as Mr. Dolivet's email suggested – if there is a January form the Hotel no longer has it) because she got another job at that time and her availability changed. He confirmed that the reason for introducing the forms was because they were having a hard time covering off weekday shifts. On the other hand, he acknowledged writing a "morale boosting note" to employees on the March 8-14 and 15-21 schedules which stated: "We sincerely appreciate your patience and understanding in these softer times of business, please stay positive, remember April is around the corner. Thank you"

87. Mr. Ghali testified that at the end of March he reviewed reservation reports for the month of April to see how many guests would be staying at the Hotel. He saw there was a big increase coming in the first week of April, although the second week of April was slower. He looked at his shift availability forms and moved Anna and Maritza to full-time. He chose them because they were available all week. Ms. Sharma was not offered a position because she was only available weekends. Another union part-time employee, was not offered a position because she also had limited availability. Mr. Ghali testified that it was he and he alone who made the decision to deal with the scheduling issues by creating two additional full time positions. He did not discuss the matter with any other managers.

88. In examination-in-chief Mr. Ghali claimed that he decided to schedule all of the food and beverage employees to work on the day of the vote. Why? "Because they were going to

take a decision which is important to them, I guess". He made the decision to schedule them on his own and was not told to do it. Ms Louzado's testimony was that she told the managers to schedule the employees the day of the vote. Mr. Ghali states that he called the employees and told them about the vote and that it was in their best interests to come and vote so no one else will decide for them what is going to happen. Later on, in his cross-examination, he seemed to backtrack on this suggestion, but then reiterated it when challenged. Finally, he acknowledged that Ms Louzado told him to schedule the employees.

89. In examination-in-chief, Mr. Ghali testified that he was unaware there was a big rally of union supporters outside the Hotel in late March 2009 and that he did not know that Ms Sharma spoke at that rally. Initially, he confirmed this testimony in cross-examination, saying that he was "super busy" when Mr. Stasiuk left (after earlier saying repeatedly that nothing had changed after Mr. Stasiuk left). Later in cross-examination Mr Ghali was asked if he heard about the rally and he replied "maybe". He was asked what he heard and he testified that "staff approached him and that the whole subject may be important for Mr. Dolivet or Ms Louzado but he had no idea". Still later he was asked again whether he heard about the rally and he said "maybe yes". When asked what he heard he replied "I don't know. I don't remember. I don't know about these things". Finally, after the Board took a break in the hearing, he acknowledged that he was aware of the rally but knew nothing about it other than people were "jumping". He claims to have had no idea that Ms. Sharma was there.

90. Mr. Ghali testified in cross-examination that he did not ask Ms. Sharma if she wanted the full time position because he knew she was in school as a full time student and she had given no indication that her availability had changed since she filled out the shift availability form. However, when told that university ends in April he replied that he had "no idea how school works here" and, despite the fact that numerous students work for the Hotel, he had no idea when school starts and finishes. Most importantly, he reiterated over and over that he made the decision to create the full-time positions on his own without approval from anyone else. When Mr. Ghali was told in cross examination that Ms. Louzado testified that it had been a group decision, Mr. Ghali denied it and said Ms. Louzado's testimony is wrong.

91. The final employer witness to testify about the Hotel's decision was Sujoy Mondal, who at the time of his testimony was the Director of Food and Beverage, and who at the time of the relevant events was Executive Chef. As Executive Chef he reported to Mr. Stasiuk until March 17 and thereafter reported to Mr. Dolivet until a permanent Director of Food and Beverage was hired. He testified that he had no role in the decision, to create full time positions but was informed of it.

92. In attempting to determine what actually occurred with respect to the Hotel's decision to promote two part-time employees less senior to Ms. Sharma the evidence of the Hotel's witnesses and the Hotel's story is critical, since it is the Hotel which bears the onus.

93. I accept that the Hotel was facing a scheduling issue regarding the anticipation that business would pick up in April as it had traditionally done (and as it actually appears to have done, at least briefly). The issue arose from the fact that in response to the 2008 economic crisis

the Hotel had not replaced two or three employees who had left employment with the Hotel in late 2008. The Hotel experienced difficulties writing the schedule and Mr. Stasiuk spoke to Mr. Dolivet and Ms. Louzado about the issue. In order to see whether the existing complement of employees was satisfactory, Mr. Stasiuk printed a form from the Hotel's forms database and spoke to the employees, including Ms. Sharma, about the importance of filling it out. Mr. Ghali had Ms. Sharma fill out a form and she wrote that she was available Saturdays and Sundays "until her availability changed".

94. Thereafter, the Hotel's story gets murky. I reject much of Mr. Dolivet's testimony on the subject. Ms. Sharma was not asked whether she wanted a full time position as he believes and testified to. In fact, based on Mr. Stasiuk's evidence it appears there was no discussion about full-time positions at all until Mr. Stasiuk had left. At one point Mr. Dolivet testified that he had no direct knowledge of what actually happened, and I think that is most likely correct.

95. Ms. Louzado's testimony had some of the same difficulties as that of Mr. Dolivet. She equated the early discussion around the issue and the Hotel's decision to implement the staff availability form with the actual decision to create full time positions and to ask the employees if they wished to be full-time. On the question of the decision and the process to have the two employees become full-time, Ms. Louzado was very vague. She could not recall when the decision was made (a central issue given that whether the decision was made after Ms Sharma spoke at the rally is a critical point), she said that Mr. Dolivet was directly involved in the decision (when it is reasonably clear on his own evidence he was not) and she initially had Mr. Mondal involved in the decision and then said she was mistaken about that and it was in fact Mr. Ghali.

96. Finally, there is the story given by Mr. Ghali. Mr. Ghali is plainly a dishonest witness. He testified (contrary to the evidence given by others) that he alone made the decision to create full time positions even though he was at that point only the acting manager and had only been in that position for a couple of weeks. He claimed to know nothing about Canadian universities, but to know enough to be absolutely sure that Ms. Sharma was not available. I do not accept his evidence on this point at all. Finally, he claimed not to have known that Ms. Sharma spoke at the rally (or even that a rally occurred), but it is apparent on the evidence that all the Hotel's employees heard about the rally. It was a big deal at the Hotel. It is inconceivable that Mr. Ghali did not hear about the rally or that Ms. Sharma had spoken at it. Dishonesty on this point, at least, suggests that Mr. Ghali has something to hide.

97. There is no question that Ms. Sharma was the union's chief in house organizer and advocate. That fact must have been apparent to everyone at the Hotel. There is also no doubt that for some time prior to speaking at the rally on March 26, 2009 she worked steady shifts of Saturday and Sunday mornings while occasionally working shifts during the week when requested by the Hotel. There is also no dispute that on the first schedule written after Ms Sharma spoke at the rally her regular shifts had been assigned to someone else and that two part time employees junior to her had been given full time status.

98. One might debate whether Ms Sharma's employment had been terminated (constructively or otherwise) in such circumstances, however it is not necessary for me to decide that issue. Regardless of whether the union's chief in house organizer's employment was terminated or whether her hours of work were eliminated, this is a circumstance where it is incumbent on the Hotel to provide an explanation, not only pursuant to section 96(5) of the Act, but otherwise.

99. The Hotel has convinced me, largely through the evidence of Mr. Stasiuk, that it had an issue in scheduling mid week in the restaurant and that was the reason it created the shift availability forms. It also has convinced me that it had a concern that come April its occupancy would rise as it had traditionally done and that it may have even greater difficulty writing the schedule. Thereafter, in my view, the Hotel has not demonstrated on a balance of probabilities that its decision to resolve the concern by promoting part time employees to full time status rather than by some other means; by promoting two part time employees below Ms Sharma on the seniority list; and by not asking Ms. Sharma whether she was interested in working full-time or whether her situation had changed such that she was available to work more shifts as a part time employee, were decisions made without the taint of anti union considerations.

100. I start with the initial decision of the identity of the individual who decided to create full time positions, at a cost to the Hotel in benefits and extra hours, rather than hiring additional part time employees or asking the existing part time employees to work more hours. We have three different versions of who made the decision. Mr. Ghali, the person who actually wrote the new schedule, testified that he made the decision alone with no input from anyone else. Ms Louzado's evidence is that it was a joint decision after a meeting of herself, Mr. Dolivet, and Mr. Ghali. Mr. Dolivet's testimony was that it was a joint decision made by Mr. Stasiuk and Ms Louzado with some input from him although he later acknowledged his input was not direct. I have already pointed out issues with all of this testimony, but more importantly, which version is right? I have no idea. I am unable to tell based on the evidence presented to me by the Hotel. In the absence of the concrete identification of a decision-maker or a group of decision makers it is impossible to assess the motives of the decision-maker and whether the decision was influenced by improper concerns. It is also impossible for the Hotel to discharge its onus in these circumstances.

101. In addition to the identity of the decision maker, the Hotel was unable to put into evidence consistent evidence about the decision making process. Mr. Stasiuk's evidence was essentially that he was going to see if he could make do with the existing complement of employees. Hence, the introduction of the shift availability forms. Clearly, at some point the Hotel came to the conclusion that it wished to hire more full-time employees. However, there is precious little evidence of that decision making process. When was the decision made? Who was at the meeting? Was there a meeting? Who advised Maritza and Anna and when? There was also no satisfactory explanation for why Ms. Sharma was not told of the Hotel's decision in advance either at her performance appraisal meeting (which occurred days before a decision must have been made) or at the last shift she worked before the new schedule was posted. Why did no one think to ask Ms Sharma whether she wanted full time hours, particularly since even on the Hotel's theory - that she was a full time student - it must have been obvious that her

schooling would normally be coming to an end in the month of April. It is hard to believe that had Ms. Sharma not been involved with the union, that the Hotel would have been so uninterested to find out if a relatively senior and valued employee (from a work perspective) was interested in the position.

102. I go a step further. I am not convinced, on a balance of probabilities, that the decision to create the full-time positions in the first place was not simply a method to remove Ms. Sharma from the workplace. That decision appears to have been made sometime after Ms. Sharma spoke at the rally under circumstances that were not properly explained by the Hotel and with no explanation as to why other options were not chosen. The decision was made with the "knowledge" that Ms. Sharma could not work full time hours and the Hotel's decision not to ask her if she wanted the position, when her shift availability form (which the Hotel claims to have reviewed at the time) plainly indicates she might have more availability later. That form had been completed two months earlier.

103. For all of the foregoing reasons I find that the Hotel has failed to meet its onus of establishing that the treatment of Ms. Sharma, which resulted in her losing all of her hours of work, was not influenced by anti union animus. It has failed to demonstrate that the decision to create full-time positions (with the inevitable loss of hours to Ms. Sharma) was not tainted by anti-union animus. It also has failed to demonstrate that the decision to fill the full-time positions with employees other than Ms. Sharma was not improperly motivated.

Discipline of Ms. Sharma

104. The union also complains about the treatment of Ms. Sharma on Saturday April 4, 2009, the day she learned that her regular weekend shifts had been taken away. On that day there were a series of conflicts between Ms. Sharma and Mr. Ghali which ultimately resulted in her being either fired or sent home for the day. I have carefully considered the evidence on this issue and, despite my misgivings about the veracity of Mr. Ghali's evidence overall, I prefer his version of events over the evidence given by Ms. Sharma. I come to that conclusion for three reasons. First, his version of events is more consistent with the version of events testified to by Mr. Marek Purgat, a bargaining unit employee who testified reluctantly and, in my view, credibly. Mr. Purgat, called by the Hotel as a witness, was clearly an independent witness. Second, there are parts of Ms. Sharma's evidence that did not make sense. Third, I have already noted that both protagonists were not entirely credible witnesses.

105. What happened was this. Ms. Sharma arrived at work at about 7:00 a.m. as usual. Her first room service order was about 8:07 a.m. (she had two others at 8:22 a.m. and 8:36 a.m.). At about 9:00 a.m. Mr. Ghali saw dirty trays in the elevator and he asked Ms. Sharma to take care of them (normally she should have cleared these things at the start of her shift). She said that she would do them later and Mr. Ghali agreed.

106. At about 9:30 a.m. Mr. Ghali went to the Hotel's banquet preparation area and saw Ms. Sharma talking to Mr. Purgat and doodling on a temporary staff notice (the Hotel alleged that the doodling itself warranted discipline. However, in my view this was a trivial matter).

Thereafter, they got into an argument which involved shouting on the part of both parties. The argument took place in an area where guests could hear it.

107. Mr. Ghali directed Ms. Sharma to leave the public area and return to the restaurant through the back of the Hotel. Instead, Ms. Sharma went to the restaurant through the guest area. Mr. Ghali then sent Ms. Sharma home.

108. On April 4 Mr. Ghali sent Ms. Louzado an email which said:

Good Morning Selina,

Sorry about this but this become a lot of work for me I don't have anything to do about unions but she is not performing at all last 2 weeks and I told her in her pep [performance evaluation] my expectations very clearly

I don't know what she was thinking but her behaviour become unacceptable

Please see attached document and I have the rest of the paper
Thanks

The attachment to the email described the incident in Mr. Ghali's eyes and opened with:

"I'm sorry that I have to send Rekha home this morning at 9:30 am her behaviour was unacceptable and she was very rood (sic) to me

I told her you need to go see the human resources next week."

109. As described above, the union then took the position that Ms. Sharma's employment had been terminated by Mr. Ghali. While I doubt this is true, the Hotel made its position clear when Ms. Louzado advised Ms. Sharma repeatedly both on the day of the incident and after that her employment was not terminated (for disciplinary reasons) and that she would continue to work at the Hotel when required. As we know, in view of the full-time positions created the Hotel did not require Ms. Sharma to work for some time.

110. Nevertheless, I accept the Hotel's position on this point. In my view it is unlikely that Mr. Ghali terminated Ms. Sharma's employment and, if he did, that decision was quickly reversed by the Hotel.

111. In my view, what occurred was that Ms. Sharma came to work on that morning and, not surprisingly, became upset when she saw that she had been removed from her regular shift. In her state of mind, she had difficulty focusing on her work and was not completing her tasks as she should have. Mr. Ghali saw her on at least two occasions not doing her job and became angry at her. Based on the evidence I heard, I am satisfied his anger was well placed. Ms. Sharma fought back and acted improperly and defiantly. It appears Ms. Sharma did little constructive work despite being told repeatedly to do her job. I do not believe that the treatment

of Ms. Sharma on this occasion was motivated in whole or part by Ms. Sharma's union activities or by anti-union animus generally.

Alleged Threats to Job Security

112. I now turn to the Hotel's alleged threat to job security through its formal face to face communication efforts. The union's complaint that the Hotel threatened job security in roundtable meetings and otherwise deserves serious attention. The issue of job security was first raised in the November roundtables. The Hotel advised employees that "our guests are our job security" and that the union cannot guarantee against lay-offs. In my view, this was a lawful discussion of the merits of the union, typical of the statements management frequently makes to employees during an organizing drive.

113. However, the Hotel did not stop there. In the April/May roundtables they returned to the theme except in a more concrete way. In the roundtables which were held immediately prior to the application for certification being filed, Mr. Dolivet referenced "job security" and the fact that only guests can guarantee job security and then referred to layoffs at the Sheraton Hotel in Toronto. Once the application for certification was filed, the Hotel sent a new message to employees as can be seen from the speaking notes for the roundtable meetings:

"In these hard economic times we have seen hotels and businesses closing and laying off..... we have not been in these situations of layoffs or closing down because we have taken some good decisions."

(emphasis added)

114. Then later the Hotel made clear that voting against the union was a "good decision":

"Today, as we stand here on the brink of a decision making day, I ask you to make the time to make a good decision."

115. It can be difficult to distinguish between legitimate free speech, as is the employer's right under section 70 of the Act, and improper statements designed to coerce or interfere with employees' rights. As the Board stated in *Sheraton Fallsvie Hotel and Conference Centre* [1995] OLRB Rep. December 1475 at page 1492:

59 The determination of whether conduct falls within the permissible boundaries of freedom of expression requires a line drawing exercise and balancing of competing interests based on the particular facts of each case. In *Lorain Products (Canada) Ltd.*, [1977] OLRB Rep. Nov. 734, at page 735 the Board commented as follows: ...

5. ... The line which separates freedom of expression from undue influence or the other prohibitions found in Section 56 of the Act is a thin one which must be drawn having regard to the facts of the particular case. There are, however, certain broad indicia which have been well set out in the *Dylex* case (supra) at paragraph 19:

"In seeking to establish where the line lies the Board starts with the presumption that employees recognize that employers generally are not in favour of having to deal with employees through a trade union, and that therefore it ought not to surprise them when their employer indicates that he would prefer it if they voted against a trade union. Following from this the Board takes the view that an invitation to employees from their employer to vote against a trade union, in the absence of any surrounding facts or circumstances which would cause the employees to place undue emphasis on such statements, does not constitute undue influence within the meaning of section 56. (See: *Playtex Limited*, [1972] OLRB Rep. Dec. 1027.) On the other hand, however, the Board is also cognizant that an employee may be peculiarly vulnerable to employer influences. This point is clearly brought out in the decision of the Canada Labour Relations Board in the *Taggart Service Limited* case [(1964) CLLR Transfer Binder '64-'66, para. 16,015 at page 13,055] the following excerpt from which was cited with approval by this Board in the leading case of *Bell & Howell Ltd.*, [1968] OLRB Rep. Oct. 695 at p. 706:

'An employer may express his views and give facts in appropriate manner and circumstances on the issues involved in representation proceedings in so far as these directly affect him and has the right to make appropriate reply to propaganda directed against him in relation thereto. However he should bear in mind in so doing the force and weight which such expressions of views may have upon the minds of his employees and which derive from the nature and extent of his authority as employer over his employees with respect to their wages, working conditions and continuity of employment. He should take care that such expressions of views do not constitute and may not be reasonably construed by his employees to be an attempt by means of intimidation, threats, or other means of coercion to interfere with their freedoms to join a trade union of their choice or to otherwise select a bargaining agent of their own choice.'"

60 The Board also examines the cumulative impact of statements and conduct to determine if they are designed to influence employees in contravention of the Act. Thus one of the tests for granting certification without a vote pursuant to section 9.2 of the Act is satisfied "where the cumulative effect of a range of unlawful employer activities, none of which taken separately call the section into play, has the effect of undermining the confidence in the rule of law which a reasonable employee is presumed to have and which gives a reasonable employee the confidence to make a free choice" (*Canac Kitchens Limited*, [1994] OLRB Rep. August 972, at page 985). By way of example, in the *Dylex* decision (cited above) at page 367, the Board did not accept the argument that a series of letters by an employer addressed to employees during the period prior to a representation vote merely contained factual information. In that case, the employer issued three letters which clearly indicated that it was opposed to having its employees represented by the applicant union. In addition to urging employees to vote "no" in the representation vote, the letters contained a series of questions and answers relating to job security, a possible future strike and statements that

the Union cannot guarantee various terms and conditions of employment. The Board concluded, at page 367, that the cumulative impact of the statements contained in the letters exceeded the realm of free speech when it stated that:

20. Counsel for the respondent took the position that the material set out in the three letters to employees was factual and that it did not constitute a form of undue influence. It may well be that each of the statements contained in the letters if taken by itself is factual. However, we nevertheless are of the view that the letters when taken together in their entirety go well beyond a mere expression of employer views but instead deliberately seek to capitalize on normal employee desires for job security and fears of loss of employment.

(emphasis added)

116. Here, the employer made a series of statements about job security which individually might constitute legitimate employer free speech. However, the cumulative effect of employees being repeatedly reminded that Unions cannot guarantee job security along with examples of unionized businesses (including hotels) forced to close down or lay off (particularly in the general economic context which existed at that time in Ontario) constituted coercion, undue influence and interference.

117. In my view the only purpose of repeating the job security statements was to send a message which cannot have been missed by the average employee – that if the union were to get in, there would be a risk of job loss. This conclusion is enhanced by the Hotel's decision, once it learned that an application for certification had been filed, to reference the "hard economic times", "hotels and businesses closing and lay-off" and then claiming that they had not been in that situation because they had made good decisions and that an equally good decision was to vote against the Union.

118. The circumstances before the Board in the instant case are very similar to those before the Board in *Dylex Limited* [1977] OLRB Rep. June 357. As noted in the excerpt from *Sheraton Fallsview* above, in that case the employer sent letters to employees in which the employer said things like "no union can provide you with job security. You can only have job security if we stand together –working to keep this operation solid" The employer referred to unionized companies that had lay offs. The Board held as follows:

19. Counsel for the applicant took the position that an employer was required to stay neutral during the course of a union organizing campaign. We are of the view that no such requirement exists. Section 56 expressly states that nothing in the section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, threats, promises or undue influence. Where the difficulty inherently arises, however, is in trying to define the line at which an expression of views by an employer becomes "coercion, threats, promises or undue influence." In seeking to establish where the line lies the Board starts with the presumption that employees recognize that employers generally are not in favour of having to deal with employees through a trade union, and that therefore it ought not to surprise

them when their employer indicates that he would prefer it if they voted against a trade union. Following from this the Board takes the view that an invitation to employees from their employer to vote against a trade union, in the absence of any surrounding facts or circumstances which would cause the employees to place undue emphasis on such statements, does not constitute undue influence within the meaning of section 56. (See: *Playtex Limited*, [1972] OLRB Rep. Dec. 1027.) On the other hand, however, the Board is also cognizant that an employee may be peculiarly vulnerable to employer influences.

20. Counsel for the respondent took the position that the material set out in the three letters to employees was factual and that it did not constitute a form of undue influence. It may well be that each of the statements contained in the letters if taken by itself is factual. However, we nevertheless are of the view that the letters when taken together in their entirety go well beyond a mere expression of employer views but instead deliberately seek to capitalize on normal employee desires for job security and fears of loss of employment.

21. No union can guarantee any employee indefinite job security. However, the respondent in its letters rather than merely stating this simple fact has instead set out in rather vivid fashion instances of entire plants being closed despite the presence of a trade union. Coupled with this the respondent has also set forth its views as to how its employees can best achieve job security. In its letter of January 14 the respondent stated: "No union can provide you with job security. You can only achieve job security if we work together in harmony to keep this operation sound." This advice is repeated in the letter of January 18, 1977 wherein it states: "A lot has been said about job security during the Union campaign. However, we have in our previous letters shown you that there is no way in which the Union can provide you with job security. We take the position that we have provided you with job security... It is easy to talk about providing job security, but the fact is that it is you and this Company working together that provide job security. The Union will never be able to do that." The implication from this seems to be that while the applicant cannot provide employees with job security the respondent can, provided that employees work together "in harmony" with the respondent. This working together in harmony, however, appears only to be possible in the absence of a union. Indeed in the concluding paragraph of the third and final letter is to be found the following message:

"We at Dylex believe that we can achieve prosperity, harmony and happiness by working together among ourselves without the interference of a Union or any other third party. I therefore urge you on Tuesday to show that you are happy to be working here and that we are doing a good job for each other. Remember mark "X" beside "NO" on your ballot."

22. Not unrelated to the above references in the letters to a lack of job security are the references to any possible negotiations. The point is made 'that the union during negotiations may not even be able to retain for employees the benefits they currently enjoy. Reference is also made to the

fact that negotiations (in which "the company is not required to agree to anything") may well lead to a lengthy strike. Coupled with this is a not so veiled threat of a possible loss of employment during the course of such a strike.

23. As indicated earlier we are of the view that the respondent's letters were deliberately calculated to play upon employee fears for their job security. Added to this are the anti-union visual displays in the respondent's premises which were in constant view of the employees at all times, as well as the references in the communication meetings to the applicant and the instructions as to how to vote "NO." Taken altogether we feel that these actions of the respondent constituted undue influence within the meaning of section 56 of the Act.

119. In my view the context in which these messages were sent is also significant. The messages were sent in the Hotel's roundtable meetings rather than in another communication form (letters or general staff meetings). Although, as a practice the Hotel often provided information to employees in roundtable meetings, it had a choice of another forum. Why was that choice made? On November 14, 2008 the senior management of the Hotel discussed its strategy in dealing with the union. There was a decision made to "do meetings in small groups". I am satisfied that the decision to and the process of providing this kind of information in small groups of employees (roundtables) with two members of management had the effect of intimidating employees.

120. I am satisfied that the employer's comments regarding job security in roundtable discussions in the November and May meetings taken together were, like those in *Dylex* and numerous other Board decisions, also deliberately calculated to play upon employee fears for their job security and violated sections 70, 72 and 76 of the Act.

Allegations Regarding the Day of the Vote

121. The union made a number of allegations regarding the actions of the Hotel and individual members of management on the day of the vote. Under the circumstances I do not find it necessary to describe those allegations in detail nor recount the evidence called by both parties in relation to it. Suffice it to say that I am satisfied that the allegations ought to be dismissed. I believe the employer witnesses on these points.

Remedy

122. I have found that the employer has violated the Act in significant ways. First, I have found that the Hotel failed to discharge its onus that the removal of Ms. Sharma's hours was not tainted by anti-union animus. The result of that decision was for all intents and purposes the termination of Ms. Sharma's employment. Even though the union took credit for her "reinstatement" to employment, the fact that she thereafter received no hours despite being an employee cannot have gone unnoticed. Second, it threatened employees with job losses by equating the making of a bad decision (voting for the union) with job losses experienced by other

companies, and interfered with the union's organizing drive by repeatedly referencing job security issues. Finally, I also find that the gross misinformation given to employees in the November, 2008 and May, 2009 roundtables interfered with the union contrary to the Act.

123. The normal result of an employer decision to discharge a key inside organizer during an organizing campaign is certification under section 11 of the Act (see *Swing Stage Equipment Rentals*, 2007 CanLII 22573 (ON LRB)). The true wishes of employees generally cannot be determined by a vote where the employer removes the key in house organizer from the workplace. There is nothing to remove the conclusions inevitably reached in the minds of employees that the employer is willing to go to extreme lengths to ensure a union does not get in at its workplace.

124. Similarly the Board has frequently found that threats, even implied threats, to job security remove the possibility that the true wishes of employees can be determined. The circumstances before me are similar to these before the Board in *Dylex*, *supra*. There, in finding that certification under the Act (in a different, but similar statutory context) should follow as a result of the employer's misconduct, the Board stated:

24. Not every contravention of the Act will necessarily call for the application of section 7a. As noted above the Board must be satisfied that the contravention has resulted in a situation where the true wishes of employees are not likely to be ascertained. In this case, however, we are of the view that the respondent's actions were of such a nature that they were likely to affect the ability of employees to express their true wishes in the representation vote.

...

This being the case the applicant has demonstrated its right to be certified pursuant to section 7a.

25. It is worth noting at this point that we do not regard the certification of a union pursuant to section 7a to be a form of "punishment" against an employer. Its purpose is instead to insure that an employer does not benefit from its own wrongdoings. In the instant case the applicant appears to have had a reasonable prospect of being selected by a majority of employees in a representation vote. The actions of the respondent, however, were such as to ensure that this could not occur. Certification of the applicant pursuant to section 7a is but an attempt to put the parties in the same position they would have been in had the respondent not engaged in conduct prohibited by section 56 of the Act.

125. Similarly, in *Sheraton Fallsview*, *supra*, the Board concluded in the same statutory context as the *Dylex* decision:

84 Based on my findings above, it is clear that the Sheraton violated sections 65, 67 and 82 of the Act throughout the union's organizing campaign and subsequent to the filing of the application for certification. The cumulative effect of the various violations of the Act by the Sheraton has

resulted in a situation where the true wishes of the employees respecting Union membership cannot be ascertained. In the final analysis, even assuming a representation vote could be an available remedy under section 9.2, I would not have ordered a vote because, based on the nature and extent of violations, I am convinced that the true wishes of employees could not be ascertained. Through the captive audience meetings held by Mr. Zappitelli and the poster campaign, threats, in the face of Union certification, to economic benefits and job security were prevalent. Further, part-time employees were subject to undue influence regarding benefit eligibility expansion. In the midst of such Employer activity and interwoven with numerous disparaging remarks about this Union and unions in general, employees were repeatedly reminded about how to rescind a union membership card. I am also satisfied that the discipline of Mr. Wilson and the targeting of the housekeeping department had a direct impact on the Union's organizing efforts. Also, the violations involving the petition enhance the cumulative nature and effect of unlawful employer activities. Despite the size of the workforce, I am satisfied that Mr. Zappitelli's message about the Union permeated throughout all staff areas of the Hotel, particularly through the poster display. It is clear that Mr. Zappitelli was of the view that all employees had been given the same information about the Union. Like in *Domus Industries* (cited above), "the well had become poisoned". To conclude that only the 30 employees who attended the three meetings of May 12, June 1 and 2, 1995 knew of or learned of the attempts to intimidate or coerce, would in effect ignore the reality of the workplace.

126. There is little about the facts of this case that would suggest that the normal result should not apply. Together, the removal of a key union organizer and the making of threats regarding job security make it impossible for the true wishes of employees to be determined in a representation vote. Although the union has been trying to organize these employees for a considerable period of time, there is no evidence about what occurred on those occasions, nor is it clear such evidence is even relevant to this application. The number of the votes cast in favour of the union, as compared to the membership evidence filed with the Board, also suggests the employer's activities taken together had a significant impact. While the erosion of the union's support might be attributable to the length of time or even the aggressive organizing activities engaged in by the union as much as the employer's efforts, I note that the employer's reference to job security occurred fairly early in the campaign as did its erroneous suggestion that employees would lose benefits, including their choice of doctors, if the union were successful. These events took place just prior to the time when the union stopped having success in signing employees up. I conclude they had a chilly effect on the Union's organizing drive.

127. The Hotel, through its statements, which were deliberately given to employees in small groups where attendance was mandatory, created a climate of equating support for the union with a concern about job security. The Hotel also gave false information to employees about issues of vital importance to employees which would naturally leave the impression they would be worse off with a union. However, perhaps these facts alone would not have caused the Board to certify the Hotel under section 11 of the Act. Perhaps had these been the only violations other measures could have allowed the true wishes of the employees to be revealed. However that was not all. Finally and most importantly, shortly before the representation vote

was held the Hotel, through Mr. Ghali, removed Ms. Sharma, the union's in-house organizer, from the workplace. It was obvious to the Hotel's employees that Ms. Sharma was the Union's driving force at the Hotel. Employees must have known her hours of work had been eliminated. While the Union claimed success in "getting her job back", by the time of the vote it must have been clear to employees that she still was not working. Employees would surely have concluded that Ms. Sharma's hours were reduced because she was a union supporter and not for any legitimate reason, despite the Hotel's explanation to food and beverage employees that it had decided to create full time positions to respond to business needs. Other employees would naturally infer from Ms. Sharma's absence and the job security comments made by the Hotel, that their job security would be in jeopardy if the union were certified.

128. I note that the statutory provisions in place at the time of the *Dylex* and *Sheraton Fallsview* decisions were somewhat different than those which apply to these applications. In particular, the Board must now consider whether there is anything short of certification which would allow the employees' true wishes regarding union representation to be determined despite the employer's violations.

129. Taken as a whole, the Hotel's illegal activity was of such a nature that the wishes of the employees cannot be ascertained in a representation vote, even a vote held in conditions favourable to the union. I have considered other possible remedies which might permit a vote to be held but none of them could ensure the ascertaining of the employees' true wishes. The intimidatory effect of removal of the Union's main in-house organizer coupled with the threats and false information cannot be overcome.

130. For all of the foregoing reasons, the Board:

- (i) finds that the responding party violated sections 70, 72 and 76 of the Act;
- (ii) finds that the conditions for certification pursuant to section 11 of the Act have been met and the union ought to be certified. A decision certifying the union will issue after the parties have been given an opportunity to resolve any bargaining unit description issues which are still outstanding [If necessary this will be resolved by the Board on the request of either party]; and
- (iii) directs the employer to post forthwith the attached "Notice to Employees" in a place where it will come to the attention of employees and keep it posted for sixty days.

131. The final issue concerns the remedy for Ms. Sharma. I have found that the Hotel's decision to create the full-time positions and not offer them to Ms. Sharma violated the Act. However, the remedy for the violation is less clear. Ms. Sharma testified that she would have accepted the full-time position had it been offered to her. She gave evidence that her family situation was such that she needed the employment benefits associated with a full time position.

132. Having said that, there is considerable doubt in my mind about whether Ms. Sharma's evidence in this regard was truthful. She was a part time employee working approximately 8 hours a week, 4 hour shifts on Saturday and Sunday mornings. She earned only slightly above minimum wage (plus tips). Had she been interested in full-time employment she surely would have sought it out elsewhere or would have found another part-time job. I also note that at the time she never said to Ms. Louzado or otherwise that she would have accepted a full time position.

133. Accordingly, in my view it is not appropriate that Ms. Sharma be compensated as if she would have accepted the full time position. Instead she should be compensated as if the Hotel returned her to work on her then normal work schedule. I direct the Hotel to pay her an amount equivalent to eight hours pay per week from April 11, 2009 until the date of this decision (or until her employment with the Hotel came to an end, whichever is earlier) less amounts already paid to her and less weeks she was unavailable for work due to being out of the country. In addition, I order the Hotel to pay her another forty hours pay to compensate her for the loss of the mid-week shifts that she occasionally worked during the course of her employment.

134. I remain seized of the application if there are difficulties implementing the decision.

Appendix "A"
The Labour Relations Act, 1995
NOTICE TO EMPLOYEES

Posted by order of the Ontario Labour Relations Board

WE HAVE ISSUED THIS NOTICE IN COMPLIANCE WITH AN ORDER OF THE ONTARIO LABOUR RELATIONS BOARD ISSUED AFTER A HEARING IN WHICH BOTH UNITE HERE AND NOVOTEL CANADA INC. HAD THE OPPORTUNITY TO PRESENT EVIDENCE. THE ONTARIO LABOUR RELATIONS BOARD FOUND THAT WE VIOLATED THE ONTARIO LABOUR RELATIONS ACT IN THE TREATMENT OF REKHA SHARMA AND IN COMMUNICATING WITH OUR EMPLOYEES AND HAS ORDERED US TO INFORM OUR EMPLOYEES OF THEIR RIGHTS.

THE ACT GIVES ALL EMPLOYEES THESE RIGHTS:

TO ORGANIZE THEMSELVES;

TO FORM, JOIN AND PARTICIPATE IN THE LAWFUL ACTIVITIES OF A TRADE UNION;

TO ACT TOGETHER FOR COLLECTIVE BARGAINING;

TO REFUSE TO DO ANY AND ALL OF THESE THINGS.

WE ASSURE ALL OF YOU THAT:

WE WILL NOT DO ANYTHING THAT INTERFERES WITH THESE RIGHTS.

WE WILL NOT INTIMIDATE OR EXERT UNDUE INFLUENCE UPON YOU, WHETHER THROUGH MEETINGS, INDIVIDUAL CONVERSATIONS OR OTHERWISE, TO PREVENT YOU FROM EXERCISING YOUR RIGHT TO ASSOCIATE AND PARTICIPATE IN THE LAWFUL ACTIVITIES OF A UNION.

WE WILL NOT LAYOFF, DISCHARGE OR THREATEN TO LAY OFF OR DISCHARGE ANY EMPLOYEE BECAUSE OF THAT EMPLOYEE'S UNION ACTIVITY OR SYMPATHIES.

Novotel Canada Inc.

PER: _____
(AUTHORIZED REPRESENTATIVE)

This is an official notice of the Board and must not be removed or defaced.

This notice must remain posted for 60 consecutive days.

DATED this 27th day of September, 2012.

3881-11-M Canadian Union of Public Employees, Local 1041, Applicant v. The City of Hamilton, Responding Party

Collective Agreement – Interest Arbitration – Reference – The Minister of Labour referred a number of questions to the Board for its advice pursuant to section 115 of the Act – The Union gave the City notice to bargain for renewal of the expired collective agreement – The Union advised the City that it would rely on Article 15.1 of the collective agreement to submit remaining matters in dispute to arbitration if bargaining was unsuccessful – Article 15.1 stated that if, after bargaining in good faith for the agreement's renewal, either party may notify the other party in writing of its desire to submit the matters in dispute to arbitration if it becomes satisfied that an agreement cannot be reached – Further, Article 15.1 provided that the Minister must appoint a single arbitrator upon the request of either party if the parties cannot agree to an arbitrator within fourteen days – The City argued that Article 15.1 was not an agreement of the parties as required by section 40(1) of the Act; that the Act provided a complete code governing collective bargaining in Ontario; that the Act provided for interest arbitration only in the circumstances set out in section 40(1); and that any provision for interest arbitration in a collective agreement is not authorized by the Act, and is accordingly unenforceable – First, the Board advised that Article 15.1 did not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act – In order to engage section 40(1), parties must give notice to bargain and then have to agree in writing to refer all matters remaining in dispute between them to an arbitrator – Thus, there was no impediment to the Minister appointing a conciliation officer – Second, the Board advised that courts do not consider the Act as a complete code such that a collective agreement cannot include a dispute resolution mechanism other than those in the Act – Instead, the courts have found that the parties can agree to, or an interest arbitrator can order, the inclusion of an interest arbitration provision for the resolution of outstanding bargaining issues – Once a party has agreed to a dispute resolution mechanism, it cannot resile from that agreement, except perhaps on agreement or in the most extraordinary of circumstances – In this case, Article 15.1 would appear to be binding because the City agreed to it and it had not been removed through bargaining or by an interest arbitrator – Further, Article 15.1 did not affect the Minister's power to appoint a conciliation officer pursuant to section 18 of the Act – The Minister had the power to appoint an interest arbitrator when the parties failed to agree on one and nothing in Article 15.1 limited the Minister's authority in this regard – As such, where there has not been an agreement on a single arbitrator, and where the parties had agreed that either party could ask the Minister to make such an appointment, the Board advised the Minister that she had the power under the Act to appoint an interest arbitrator – Advice given to the Minister

BEFORE: *Gail Misra*, Vice-Chair.

APPEARANCES: *Elizabeth Nurse, Bridget Pridham, Tony Filice, Tami Sadonoja, Cathy Kenyeres, Jeff Martin, Mike Christian, and Ange Jelcic* for the applicant; *Richard Nixon, Lora Fontana, Andre Gulabsingh, Pooja Punjabi and Al Dore* for the responding party.

DECISION OF THE BOARD: October 12, 2012

1. This is a reference made pursuant to section 115 of the *Labour Relations Act, 1995* (the "Act") in which the Minister of Labour (the "Minister") has referred a number of questions to the Board for its advice.

2. The questions referred are as follows:

1. Does Article 15.1 of the expired collective agreement constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act such that the Minister would not be able to appoint a conciliation officer (as the agreement to arbitrate would supersede, pursuant to subsection 40(2), provisions in section 18 of the Act relating to conciliation)?

2. If Article 15.1 does constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act, does the Minister have the power under the Act to appoint an interest arbitrator where the parties fail to agree on an interest arbitrator?

3. If Article 15.1 does not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act, does Article 15.1 nevertheless compel the parties to refer issues in dispute to an interest arbitrator?

4. If Article 15.1 does not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act but does nevertheless compel the parties to refer the issues in dispute to an interest arbitrator:

- a) What effect, if any, does Article 15.1 have on the Minister's power to appoint a conciliation officer pursuant to section 18 of the Act (given that section 40 of the Act in this case cannot be relied upon to prohibit an appointment)?
- b) Does the Minister have the power under the Act to appoint an interest arbitrator where the parties fail to agree on an arbitrator?

The Background

3. There is no dispute about the facts underlying the issues that led The City of Hamilton (the "City") and the Canadian Union of Public Employees, Local 1041 (the "Union" or "CUPE") to make their respective requests to the Minister, which ultimately led to this reference from the Minister to the Board (the "Ministerial Reference").

4. CUPE represents a bargaining unit of front-line supervisors employed by the City.

5. The parties were bound to a collective agreement that was in effect from January 1, 2008 to December 31, 2010. On January 5, 2011 the Union gave the City notice to bargain for renewal of the expired collective agreement.

6. Early in negotiations the Union advised the City that if bargaining was unsuccessful, it would rely on Article 15.1 of the collective agreement to submit remaining matters in dispute to arbitration. The City immediately objected and took the position that Article 15.1 would be of no legal force or effect once the parties were in a legal strike or lock-out position. It stated it would be relying on section 40(1) of the Act, and indicated it would not agree to arbitration of outstanding issues as the legislated requirements of that section would not have been met in this instance.

7. Article 15.1 states as follows:

15.1 If after bargaining in good faith for the renewal of this agreement, with or without modifications, either party becomes satisfied that an agreement cannot be reached, it will notify the other party in writing of its desire to submit the matters in dispute to arbitration. If the recipient of the said notice and the party desiring arbitration do not, within a period of fourteen (14) calendar days after receipt of the said notice, agree upon a single arbitrator the appointment of the single arbitrator shall be made by the Minister of Labour for Ontario upon the request of either party.

8. This article of the collective agreement had been freely negotiated by the parties at least fifteen (15) years ago, but has never been utilized until this round of negotiations.

9. Section 40 of the Act states as follows:

40. (1) Despite any other provision of this Act, the parties may at any time following the giving of notice of desire to bargain under section 16 or 59, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this Act, including those provisions relating to conciliation, mediation, strike and lock-out, and the provisions of subsections 48(7), (8), (11), (12) and (18) to (20) apply with necessary modifications to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

(3) For the purposes of section 67 and section 132, an irrevocable agreement in writing referred to in subsection (1) shall have the same effect as a collective agreement.

10. Following the notice to bargain in early January 2011, the parties met on a number of occasions to negotiate but were unable to reach a new collective agreement. Therefore, by a letter dated January 25, 2012 the Union advised the City that since it believed that an agreement could not be reached, it was giving notice under Article 15.1 of its desire to submit the matters in dispute to arbitration. CUPE offered three names of potential arbitrators for the City's consideration. It would appear that the City did not respond to that letter.

11. On January 30, 2012 the City requested that the Minister appoint a conciliation officer. Relying upon Article 15.1 of the collective agreement, the Union objected to such an appointment.

12. Despite the parties' respective positions, they continued to meet to try to negotiate a new collective agreement. However, by a letter dated February 13, 2012, CUPE asked the Minister to appoint an interest arbitrator in accordance with Article 15.1 and section 48(4) of the Act. The City objected, and asked the Minister not to make such an appointment.

13. On March 12, 2012 the Minister made this reference to the Board, seeking the Board's advice on questions related to the appointment of a conciliation officer, and the appointment of an interest arbitrator.

14. On March 19, 2012 the parties agreed to adjourn the Board's process in the Ministerial Reference and to meet with a conciliation officer. CUPE agreed to the appointment of a conciliation officer on a "without prejudice" basis, and the Minister made the appointment on March 26, 2012. Despite the parties' and the conciliation officer's efforts at negotiations on two days in late March, they were unable to conclude a collective agreement. Hence, on April 3, 2012 the Minister asked the Board to recommence its proceedings in the Ministerial Reference. The parties filed extensive written submissions, including documents and jurisprudence, and a hearing was held on August 16, 2012.

The Ministerial Reference

15. The Board will address each of the questions posed in the Ministerial Reference.

Question 1: Does Article 15.1 of the expired collective agreement constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act such that the Minister would not be able to appoint a conciliation officer (as the agreement to arbitrate would supersede, pursuant to subsection 40(2), provisions in section 18 of the Act relating to conciliation)?

16. The City argues that Article 15.1 does not constitute an agreement of the parties to arbitrate within the meaning of section 40(1) of the Act because it is not an agreement in writing reached following the giving of notice of desire to bargain in this round of negotiations. Therefore, it argues, all other dispute settlement provisions of the Act are available to the parties, including the right to request that the Minister appoint a conciliation officer.

17. While CUPE had made written submissions on this question, it decided not to address the question at the hearing.

18. On a plain reading of Article 15.1 of the collective agreement and section 40(1) of the Act it is clear that Article 15.1 does not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act. There is no reference to the provision of the Act in the

parties' Article 15.1 language, nor does the article contain language that mirrors section 40(1). In this instance the parties, when they agreed to Article 15.1, did not rely on section 40(1) of the Act at all.

19. Furthermore, and in the absence of agreement otherwise, in order to engage section 40(1) parties have to have given notice to bargain, and then have to agree in writing to refer all matters remaining in dispute between them to an arbitrator. While CUPE had given the City notice to bargain in January 2011, at no point subsequent to that did the parties reach a written agreement to refer all matters remaining in dispute between them to an arbitrator for final and binding determination. Rather, these parties had a subsisting collective agreement in which they had agreed to Article 15.1, which provides them with an avenue to get to an interest arbitrator in the event that they cannot resolve the terms of a collective agreement. As such, I agree with the Board's finding in *Haldimand-Norfolk Regional Health Unit*, [1978] OLRB Rep. February 197, (the "*Haldimand-Norfolk Ministerial Reference*"), discussed in detail below, in this regard, and find that in light of the language of section 40(1) of the Act, the agreement to arbitrate in the City and CUPE collective agreement is not an agreement to go to interest arbitration in accordance with section 40(1) of the Act.

20. The Board will have more to say about this later in response to other questions posed by the Minister, but in responding to this question it is not necessary to simply rely on the differences between Article 15.1 of the agreement and section 40(1) of the Act. The Board notes that in their collective agreement these parties have agreed that "during the life of this agreement, and during the period of negotiation of any revisions to this agreement or of a new agreement, including the period of arbitration there shall be no lockout" (Article 2.3) or "strike or other cessation of work" (Article 3.3).

21. The only way that an employer could be in a legal lock out position, or a union and its members in a legal strike position, is if they have availed themselves of the provisions of the Act that start with giving notice of desire to bargain (s. 16), following a conciliation officer having made efforts to assist the parties to effect a collective agreement, which may ultimately result in the issuance of a "no board" report pursuant to section 20, and further, after the time envisaged in section 79, following the issuance of a "no board" report, has passed. Hence, in my view these parties have specifically envisaged the appointment of a conciliation officer.

22. For the reasons outlined above, the Board advises the Minister that there is no impediment to the appointment of a conciliation officer in this instance.

Question 2: If Article 15.1 does constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act, does the Minister have the power under the Act to appoint an interest arbitrator where the parties fail to agree on an interest arbitrator?

23. For the reasons already outlined above, since I am of the view that Article 15.1 does not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act, it is not necessary to answer this question.

Question 3: If Article 15.1 does not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act, does Article 15.1 nevertheless compel the parties to refer issues in dispute to an interest arbitrator?

24. As noted in response to Questions 1 and 2 of the Ministerial Reference, the Board is of the view that Article 15.1 does not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act. As such, it is not clear that Question 3 relates to the Minister's powers, and would not therefore be a question which the Board would normally answer on a Ministerial referral. However, the parties had made extensive submissions to the Minister both prior to the Ministerial Reference and after it had been made, and apparently wished the Minister to not only seek the Board's guidance on this question but also on two additional questions which the Minister ultimately decided not to refer to the Board. The parties made thorough submissions to the Board on this issue, and no one took the position that the Board should not answer the question. As such, it would appear that both the parties and the Minister wish to have the Board express its views in response to the Minister's question. The Board's advice to the Minister is just that, and is therefore not necessarily binding on anyone.

25. There is no dispute that the expired collective agreement between CUPE and the City continued in force by virtue of section 86 of the Act in January 2012 when the Union gave the City notice under Article 15.1 that it wished to engage that provision. Thus, from a purely contractual point of view, Article 15.1 would permit the parties, should either of them wish to do so, to refer their outstanding bargaining issues to an interest arbitrator.

26. However, that is not the only consideration in this question. The City argues that Article 15.1 is a nullity. It argues that the Act is a complete code that outlines the only way in which parties which are subject to the Act may conduct themselves, and that as such, section 40 is the only method by which parties can access interest arbitration in circumstances similar to this case (i.e. where it is not a first contract situation in which the Board has ordered first contract arbitration, or where the parties are not governed by the *Hospital Labour Dispute Arbitration Act*). It argues that parties cannot contract out of the provisions of the Act, so that their agreement to Article 15.1 is immaterial, and that article is a nullity. It states that to do otherwise would lead to a conflict with the Act in that Article 15.1 purports to give parties another method of getting to interest arbitration when there is legislation (section 40(1) of the Act) that describes the only way in which parties can have access to interest arbitration when they are in circumstances similar to those found in this case.

27. CUPE argues that there is no impediment to parties agreeing, as they did here, to a dispute resolution mechanism, and that Article 15.1 is neither contrary to the Act nor an example of contracting out of the Act.

28. While the questions raised in this Ministerial Reference are uncommon, they are not entirely unique. The Board was asked to advise the Minister on one of the same questions approximately 34 years ago, and since then has also had to address applications that raised aspects of other issues in this Ministerial Reference. As well, through the judicial review of both

grievance and interest arbitration awards, both the Ontario Court of Appeal and the Supreme Court of Canada have opined on aspects of the issues now before the Board. As such, it would be useful to outline the case law relied upon by the parties, and to do so in chronological order so that one may see the development of the jurisprudence over time.

29. The 1978 *Haldimand-Norfolk* Ministerial Reference, cited above, is the first time that the Board was asked by the then Minister of Labour to opine on the question of whether she had the authority under the Act to make the appointments necessary to constitute an interest board of arbitration. The Board issued its advisory opinion to the Minister on February 17, 1978.

30. In that decision, Chair Don Carter succinctly described the difference between an interest arbitration board and a rights arbitration board as follows:

2. At this point it should be made clear that the board of arbitration in question is one that would resolve the collective bargaining differences of the parties. This form of arbitration, commonly called interest arbitration, must be distinguished from what is called rights arbitration. Interest arbitration is simply a means of resolving collective bargaining impasses by having outstanding matters in dispute determined by an arbitrator, or board of arbitration. By contrast, the procedure of rights arbitration only comes into play once the negotiations have produced a collective agreement. At that stage any differences arising from the interpretation, application, or administration of that collective agreement, by force of section 37 [now 48] of the *Labour Relations Act*, are required to be resolved by the process of rights arbitration, or grievance arbitration. The importance of this latter procedure becomes apparent in the light of the prohibition in section 63 [now 79] of the Act, barring resort to strike and lock-out action during the operation of a collective agreement.

31. In that case, as here, the parties had agreed voluntarily to a provision in their collective agreement that if they could not reach a new collective agreement through bargaining, either party could notify the other in writing of its desire to submit issues to arbitration for the settlement of a new collective agreement, and would at the same time name their nominee to the board of arbitration. If the parties or their respective nominees were unable to agree on who should chair the interest board of arbitration, they had further agreed that either party could request that the Minister of Labour make such an appointment. This provision had been in the collective agreement for the terms of four or five successive agreements. However, on this occasion the employer challenged the validity of the provision, and argued that it raised a question of the entitlement of the Minister to appoint an arbitrator under what is now section 40(1) of the Act.

32. As is the case here, there was no question but that by virtue of section 86 of the Act (often referred to as the 'statutory freeze' provision) the terms of the expired collective agreement continued in force at the time that the union had served notice to arbitrate. Hence, the Board found that the agreement to arbitrate was clearly within the framework of the collective agreement. However, the Board asked itself whether the interest arbitration provision in the

collective agreement fell within the scope of section 40(1) of the Act. The Board found that it did not, because it had been agreed to before notice to bargain had been given, and formed an integral part of the existing collective agreement (at paras. 7-8 of the decision).

33. I adopt the Board's reasoning in this regard, and it is in part why in Question 1 of the Ministerial Reference I find that the agreement to arbitrate in the City and CUPE collective agreement is not an agreement to go to interest arbitration in accordance with section 40(1).

34. The Board in the *Haldimand-Norfolk* Ministerial Reference went on to note the following about the nature of the collective agreement provision, and its status:

9. This conclusion, however, does not leave the agreement to arbitrate in a legal vacuum. Section 34c [now 40(1)] is directed at those agreements to arbitrate made during negotiations and for the purpose of resolving any outstanding matters arising out of those negotiations, providing such arrangements with a legal structure which did not exist prior to its enactment. *Agreements to arbitrate contained within a collective agreement are on a different legal footing, being governed by the same legal regime as the collective agreement itself. The agreement to arbitrate, therefore, can be enforced in the same way as any other provision in the collective agreement.*

(Emphasis added)

35. The Board went on to indicate that the question was not the extent of the Minister's authority to appoint under what is now section 48(4) of the Act, but was about her contractual authority to appoint under the terms of the collective agreement where one party was failing to comply with the collective agreement term (at para. 10 of the decision). The Board was of the view that section 48(4) only applied to rights arbitration, and not to interest arbitration, and as such only addressed a failure to appoint a rights arbitrator. Thus, the Board stated that the question was outside its advisory jurisdiction under what is now section 115 of the Act.

36. Nonetheless, and with the parties' agreement, the Board proceeded to express its views about the validity of the interest arbitration provision in the collective agreement. The employer argued that the collective agreement provision had the potential to continue in perpetuity, and that the only way in which it could regain the right to lock out its employees was if the union agreed to change the provision, or through a favourable ruling by an interest arbitration board, both of which it claimed were unlikely. Thus, it argued that the Board should find that the provision was a nullity and that the parties could not contract out of the provisions of the Act.

37. The Board held that the scheme of the Act did not require resort to economic sanctions as the exclusive method of impasse resolution, but rather only restricted the timing of a strike or lock out. Further, nothing in the Act expressly restricts the use of interest arbitration as a method of impasse resolution, and as an example the Board pointed to section 40(1). The Board therefore went on to say:

16. The express provision in section 34c [now 40(1)] for this one form of interest arbitration, according to counsel for the employer, indicated that it was the only form of interest arbitration permitted by the scheme of the Act. According to this argument, section 34c, because it avoids the problem of a procedure for interest arbitration continuing in perpetuity, was intended by the Legislature to be the sole procedure for arbitration of interest disputes. *For two reasons this argument is less than convincing. First, we are not convinced that it is impossible for parties who wish to provide for interest arbitration in a collective agreement to draft language which would prevent the provision from continuing from agreement to agreement. Second, we are not persuaded that, in this type of case where the language of the collective agreement does not restrict the continuation of the interest arbitration procedure in subsequent agreements, it is impossible for the parties to negotiate themselves out of this procedure, or for an arbitrator to decide that the procedure should not remain as a term or condition of the new collective agreement.*

(Emphasis added)

38. The Board's advisory opinion to the Minister in the *Haldimand-Norfolk* Ministerial Reference was that the scheme of the Act did not restrict recourse to voluntary interest arbitration, and that the particular procedure for interest arbitration that the parties had agreed to in their collective agreement could not be treated as a nullity.

39. The City has made essentially the same arguments before the Board as were made in the *Haldimand-Norfolk* Ministerial Reference in 1978. The one difference is that the City does not make the perpetuity argument, and concedes that it would be possible to negotiate or interest arbitrate Article 15.1 out of its collective agreement with CUPE.

40. The City urges the Board to find that the decisions of various courts and the Board since February 1978 have changed how the Board should view this issue. That jurisprudence will be reviewed in some detail, but I generally agree with the Board's analysis in the *Haldimand-Norfolk* Ministerial Reference, and in light of the subsequent jurisprudence, find it as apt today as it was in 1978.

41. In December 1978 the Supreme Court of Canada issued *Bradburn v. Wentworth Arms Hotel*, [1979] 1 S.C.R. 846 ("*Bradburn*"). In that case the issue was the construction of two conflicting collective agreement provisions, and whether as a result, a union had been on an illegal strike. One article of the agreement provided for the term of the agreement and its termination, but another contained a bridge provision that the agreement remained in effect until a new agreement was negotiated and concluded. In that case the union had given notice to bargain; the parties had negotiated; a conciliation officer had been appointed by the Minister; when negotiations broke down, a "no board" report issued; and, the union went on strike fourteen days later.

42. The employer in *Bradburn* maintained that the union could not strike because the collective agreement remained in effect by virtue of Article 13.02 and filed a grievance. The majority of the grievance arbitration board found that there was a collective agreement in effect because of Article 13.02, and that the strike had therefore been illegal. On judicial review the Divisional Court, and later the Ontario Court of Appeal, upheld the arbitration board's decision that the strike had been unlawful. However, the nine judges of the Supreme Court of Canada overturned all of the decisions below. Both the majority decision, written by Estey J. on behalf of six of the judges, and the concurring decision written by Chief Justice Laskin on his own behalf and for two other judges, essentially found that once the union had given notice to bargain, it had invoked the collective bargaining process under the Act. That process had come to an end with the Minister's issuance of the "no board" report and following the expiration of the fourteen days thereafter, the parties were in a legal strike or lock-out position. As such, the strike had been lawful and the union had not been bound by the collective agreement provision which stated that the previous collective agreement continued in force until the next agreement became operative.

43. The City relied heavily on the *Bradburn* decision for the proposition that the Supreme Court had stated that parties could not be taken to have agreed to contract out of the Act, and that in this instance the parties' agreement to Article 15.1 amounts to contracting out of the Act, which the Board and Minister should not countenance. Specifically, the City relied on the following statement in the Laskin C.J. concurring decision, at page 852:

In short, in my view, the parties attempted by article 13.02 to keep their agreement alive pending the exhaustion of renewal bargaining and conciliation procedures but expressed themselves lamely. Article 13.02 is reconcilable with article 13.01 by viewing it as a supplement in accordance with the scheme of The Labour Relations Act. It would be a violation of that scheme to ignore the context in which article 13.02 appears and to give it a force independent of the provisions of article 13.01 respecting termination. The fact that s. 70(1) [now 86] of The Labour Relations Act prescribes a statutory extension of working conditions pending renewal bargaining and exhaustion of conciliation procedures does not, in my opinion, mean that article 13.02 would be surplusage or that it necessarily envisaged a perpetual extension of the collective agreement until a new agreement was in fact concluded. It may as rationally be regarded as specifying a holding position while there is resort to renewal bargaining and conciliation procedures. The board majority's position appears to me to mean that by agreeing on article 13.02 the parties have contracted out of The Labour Relations Act. This to me is inadmissible.

44. In my view Chief Justice Laskin, in the paragraph above was seeking to find a way to reconcile the parties' agreed-upon collective agreement language with the scheme of the Act, and was specifically disagreeing with the rights arbitration board, which he believed to have been of the view that by agreeing to Article 13.02, the parties had contracted out of the Act. Rather, he specifically indicated that it would be a violation of the scheme of the Act to ignore the context

in which the collective agreement language appeared, and to read it in isolation from the other provision in Article 13.

45. Estey J., writing for the majority, stated as follows at p. 858 of the decision:

There are serious consequences for the participants in the field of labour relations were a court to construe the provisions of *The Labour Relations Act* and the collective agreement in such circumstances as now before us, in such a way as to cause the establishment of a perpetual collective agreement terminable only on the execution of a new collective agreement by the parties. Where not barred by the statute the parties of course can, by unambiguous language, bring about results which others might consider to be improvident. In such circumstances the courts may not properly interfere. The scheme of labour relations under the Ontario Act is founded upon collective bargaining leading to a collective agreement and thereafter to replacement agreements. Collective bargaining in turn is an activity in which the parties participate in the full realization of their respective economic positions and strengths subject only to the limitations and boundaries imposed on the parties by *The Labour Relations Act*. Consequently, collective agreements, which are of course creatures of statute finding both their origin and their extent within the Act, reflect these realities. A court therefore should not be quick to place a meaning on a term of a collective agreement which would put that clause in conflict with the general philosophy of labour relations as established under the applicable statute. Such should be the case only where the contract by its clearest intent and provisions dictates otherwise. I do not find such to be the case here.

46. In the City and CUPE collective agreement, as I have noted earlier, the parties clearly anticipated that they would be participating in the collective bargaining regime outlined in the Act, and specifically at Articles 2.3 and 3.3 addressed themselves to what they could do if they were unable to reach a new collective agreement through negotiations. Their agreements may be viewed as "improvident" by some, but as the Supreme Court stated, courts (and I would add labour boards) should not interfere, because the parties participate in collective bargaining with the full realization of their respective economic positions and strengths, and with full knowledge of their rights under the Act. Thus, considered in context, it cannot be said that the parties before me agreed to contract out of the Act: Rather, they agreed to an alternative dispute resolution mechanism should they find themselves unable to agree on a collective agreement or approaching a strike or lock out position.

47. The most oft-quoted paragraph from *Bradburn*, cited above, was written by Estey J. (at p. 861), where he stated as follows:

When the alternative to settlement on new proposals is the infinite application of the existing agreement, collective bargaining, as the term is understood in labour relations, will not function. It would take the clearest possible language in my view to drive a court to an interpretation which would find the parties voluntarily stripping themselves of the opportunity to call to their aid the

provisions of the statute to change a collective agreement, and to substitute for those proceedings so traditional now in the labour relations of our community, a permanent agreement continuing until both parties agree upon a replacement agreement.

48. Thus it would appear that while the Supreme Court was not in favour of a perpetual collective agreement where the terms continued *ad infinitum*, it did not preclude the possibility that parties to an agreement may voluntarily strip themselves of the opportunity to strike or lock-out, and required that they do so in the clearest possible language. It is noteworthy that in *Bradburn* the Court only considered the possibility of parties agreeing to a continuing collective agreement, not an alternate dispute resolution mechanism. A later Supreme Court decision specifically considered the inclusion of an interest arbitration provision in collective agreements.

49. The Board notes that it is not uncommon for parties to collective agreements to create their own dispute resolution mechanisms which supplement those in the Act. One example in the construction industry is that of union and employer organizations having their own expedited grievance arbitration scheme rather than engaging section 133 of the Act. Another example, also in the construction industry, is that of parties agreeing on an alternate method of dealing with jurisdictional disputes, rather than utilizing section 99 of the Act.

50. As the Board stated in the *Haldimand-Norfolk* Ministerial Reference, cited above, the Act prescribes when parties may legally strike or lock out, but it does not require the application of economic sanctions (at para. 15 of that decision). As an example, the Board pointed to section 40(1) of the Act, but also stated that that did not exhaust the possibilities that the Legislature intended for impasse resolution: It found that a provision much like the one in this case could not be treated as a nullity as the Act did not restrict recourse to voluntary interest arbitration.

51. It is worth noting that if, on the facts before it, the unanimous Supreme Court in *Bradburn* could not find that the parties there had intended to contract out of the Act, it is difficult to see how the Board may find that CUPE and the City have done so in this instance.

52. The City argued that since the *Haldimand-Norfolk* Ministerial Reference was decided before the Supreme Court issued *Bradburn*, that the Board should not consider it as persuasive. For reasons that follow I do not accept that argument. As will become apparent, the Ontario Court of Appeal and the Supreme Court of Canada have consistently found that the Act is not a complete code which would preclude interest arbitration provisions from being included in collective agreements. The Court of Appeal has held that interest arbitrators cannot order the inclusion of an interest arbitration provision that purports to circumvent the legal requirements of section 40(1) of the Act, but has found that an interest arbitration provision that is simply a dispute resolution mechanism is acceptable. The Supreme Court of Canada held that interest arbitration boards can include in collective agreements clauses of the type before me in this case. An obvious corollary to those findings is that the application of such a provision cannot amount to contracting out of the Act.

53. In February 1979 the Ontario Court of Appeal issued its decision in *Grey-Owen Sound Health Unit and Ontario Nurses Association*, [1979] O.J. No. 4215 ("Grey-Owen Sound Court of Appeal decision"). In that case the parties had reached an impasse in bargaining and agreed under what is now section 40(1) of the Act to resolve their remaining outstanding issues through interest arbitration. The interest board so appointed granted a union proposal for language in the new collective agreement that would in the future permit either party to invoke the section 40(1) interest arbitration provision after giving notice to bargain, but without having to get agreement in writing. At the interest arbitration hearing the employer had objected to the inclusion of this language in the agreement, and hence sought judicial review of the interest board's decision. The Divisional Court upheld the interest board's decision, so its decision was appealed to the Court of Appeal. For somewhat differing reasons, the three judges of the Court of Appeal arrived at a common decision to quash the part of the interest board's award that had inserted the arbitration clause, and the court remitted the issue back to the interest board to re-fashion the interest arbitration provision.

54. The question before the Court of Appeal was whether the interest arbitration board had the jurisdiction to deal with the interest arbitration clause in the way that it had. The relevant portion of the clause that the interest board awarded (at para. 4 of the decision) was as follows:

15A(1) In the event that either Party elects to modify or amend this Agreement and gives notice to bargain in accordance with the Agreement, the parties agree that either party may at any time after notice to bargain, invoke the provisions of Section 34c [now 40(1)] of the *Labour Relations Act* by notifying the other party in writing of its desire to submit to Arbitration the negotiation of a new Agreement. The notice shall contain the name of the Party's appointee to an Arbitration Board. The recipient party shall within five (5) days thereafter advise the other party of the name of its appointee to the Arbitration Board. *The notice of desire to submit to Arbitration by a party read in conjunction with this Article shall create an irrevocable agreement in writing to refer all matters remaining in dispute between the parties to Arbitration as contemplated by section 34c, notwithstanding the expiry of this Collective Agreement.*

(Emphasis added)

55. The problem in that instance was that the parties were being taken to have agreed to go to interest arbitration as prescribed in section 40(1) of the Act in all future rounds of bargaining, and furthermore, that despite the requirements of that section of the Act, the provision purported to waive the statutory requirements.

56. The City relies on a portion of the Wilson J.A. decision in which she stated that she was satisfied that the Act was intended as a complete code of procedure for the collective bargaining process (at para. 12 of the decision). In the City's view, since the courts have held that the Act is a complete code of procedure, parties cannot contract out of it as they did in the City and CUPE collective agreement at Article 15.1.

57. However, it is noteworthy that Wilson J.A. was really concerned with whether the interest board had "jurisdiction to deal with the interest arbitration clause in the way it did" having regard to the language of section 40(1) of the Act (at para. 13 of the decision). She noted at para. 18 of the decision that it was more consonant with the statutory scheme of collective bargaining that arbitration under section 40(1) was intended to resolve an existing impasse that the parties had reached in their negotiations, and that the interest board could not grant language that would prospectively deem the parties to have met the preconditions of that section for future rounds of bargaining (at para. 19 of the decision). Wilson J.A. allowed the appeal on the basis that the interest board had exceeded its jurisdiction, and remitted the matter back to the board.

58. The most often cited part of the Grey-Owen Sound Court of Appeal decision is that of Brooke J.A., who dissented in part. It is his dissenting comments that have been adopted by the Supreme Court of Canada. Brooke J.A. stated that in his view "the Act has not been held to be a complete code in the sense here contended for" and that the object of the Act is to encourage parties to reach a collective agreement. In his view, the sections of the Act relating to collective bargaining and to making of collective agreements "are part of a code, but a code which is primarily a means of bringing a reluctant party to the bargaining table, to negotiate in good faith, and make and abide by a collective agreement" (at paras. 33 and 34 of the decision). He went on to state as follows:

35. The Act should not be construed in a fashion which will restrain those engaged in labour relations in negotiating and settling their differences through collective agreements, save where the Act specifically prohibits or directs a course of conduct. It is a code, but in my view, it would be creating unnecessary obstacles in industrial relations to say that it is a complete one in the sense contended for here.

36. For similar reasons I do not agree that the Act contains a complete statutory scheme which must be resorted to when collective bargaining does not end in a collective agreement. This is the effect of the appellant's submissions. I think such a construction runs contrary to the purpose of the statute. None of the procedures available or permitted by the Act is obligatory. But more important, to accede to these contentions is to say that while the purpose of the Act is to encourage harmonious relations and encourage procedures in collective bargaining one cannot by collective bargaining resolve now to resort to a recognized method for settling future matters in dispute when negotiations have failed. By definition a collective agreement may contain provisions respecting the rights, duties, obligations of the parties and they can put off the right to strike and lock out in favour of final and binding arbitration. The parties could attain a more definite result but to the same effect as that sought here by agreeing to a long-term contract and providing for reopening of specified issues from time to time for negotiation, and in the event of disagreement that they would be resolved by arbitration. True, there is a difference in that the statute prohibits a strike during the term of the collective agreement. But there is nothing to prohibit the union from putting off its right to strike or the employer from putting off its right to lock out in favour of arbitration, a right which a future arbitrator may terminate.

The important thing is that nothing in the Act prohibits a present agreement for future interest arbitration of matters in dispute following bargaining in such circumstances, nor when the parties fail to agree in negotiation for future collective agreement, because this fulfils the object of the Act. In considering the same issue the Ontario Labour Relations Board stated in its opinion in a reference pursuant to s. 96 of the Act in *Haldimand-Norfolk Regional Health Unit v. Ontario Nurses' Ass'n*, [1978] O.L.R.B. Rep. 197 at p. 203:

The scheme of the Act, in our view, does not require that resort to economic sanction be the exclusive method of impasse resolution. What the Act expressly restricts is the timing of the strike and lock-out action, permitting, but not requiring, the application of economic sanctions outside these parameters. See sections 36, 63, 65, 67. By contrast, the Act does not in any way expressly restrict the use of interest arbitration as a method of impasse resolution. Voluntary interest arbitration agreed to outside the framework of a collective agreement, in fact, is expressly recognized in section 34c [now 40 (1)] of the Act, indicating that the Legislature did not intend that strike and lock-out action was to enjoy a monopoly as an impasse resolution procedure.

37. As to whether the scheme of the Act permitted interest arbitration only under s. 34c [now 40 (1)], the Board said:

For two reasons this argument is less than convincing. First, we are not convinced that it is impossible for parties who wish to provide for interest arbitration in a collective agreement to draft language which would prevent the provision from continuing from agreement to agreement. Second, we are not persuaded that, in this type of case where the language of the collective agreement does not restrict the continuation of the interest arbitration procedure in subsequent agreements, it is impossible for the parties to negotiate themselves out of this procedure, or for an arbitrator to decide that the procedure should not remain as a term or condition of the new collective agreement.

38. It concluded, at p. 204:

Having regard to these considerations, our advisory opinion is that the scheme of the Act does not restrict recourse to voluntary interest arbitration, and that the particular procedure for interest arbitration agreed to by the parties in their collective agreement cannot be treated as a nullity.

I agree with these conclusions.

59. Brooke J.A. was of the view that in that case the interest board had been wrong to the extent that it was unnecessary to resort to the wording of section 40(1) of the Act to fashion an article for insertion in the collective agreement. In his view the Divisional Court had been correct that arbitrators had jurisdiction to make an award for future interest arbitration of matters

in dispute following bargaining for the renewal of a collective agreement, but that the article awarded by the board of arbitration should not have been couched in the language of section 40(1) of the Act. He therefore allowed the appeal, but would remit the article back to the board of arbitration to fashion a new article, and that if the new article was to continue as a provision of future collective agreements, it should clearly state that it could be terminated by parties in their negotiations, or by an arbitrator who would so decide (at paras. 39 and 40 of the decision).

60. As noted earlier, the City argues that the Supreme Court's decision in *Bradburn*, cited above, is the definitive statement on the Act being a complete code of procedure for the collective bargaining process. However, *Bradburn* had issued before the Ontario Court of Appeal issued its decision in *Grey-Owen Sound* and since *Wilson J.A.* refers to it in her judgment, it is clear that it was before that court. Notwithstanding *Bradburn*, and likely because that is not what it stands for, *Brooke J.A.* both relied on the Board's 1978 *Haldimand-Norfolk* Ministerial Reference, cited above, and found no impediment to the inclusion of language in a collective agreement that would permit parties to choose to go to interest arbitration to resolve their outstanding collective bargaining issues. It is also worth noting that all three judges in the *Grey-Owen Sound* Court of Appeal decision agreed that the interest arbitration board could include an interest arbitration provision in the collective agreement. Thus, it cannot be said that any of the judges was ultimately of the view that the Act was a complete code for collective bargaining, or that an interest arbitration provision in a collective agreement would be a nullity because it would amount to contracting out of the Act. Had that been their view, they would not have remitted the matter back to the interest board to fashion a new provision.

61. In August 1979 the Board had occasion to issue a decision in a case between the same parties as had been before the Court of Appeal, this time because the union had filed an illegal lock out application. In *The Grey-Owen Sound Health Unit*, [1979] OLRB Rep. August 751, ("*Grey-Owen Sound* Board decision") the Board addressed the problem of that employer threatening and then locking out nurses while the parties were in the ongoing process of interest arbitration. It appears that following the issuance of the Court of Appeal decision in February 1979, the interest board issued its final decision in July 1979. In that decision it included a provision that the parties could utilize interest arbitration for the next round of negotiations following the expiration of the collective agreement it was deciding. The question before the Board was how the arbitration process mandated by the latest interest board decision affected the right to strike or lock-out.

62. In the course of writing for the majority of the Board, Vice Chair MacDowell stated as follows:

16. Nothing in the Act prevents the parties from *signing a collective agreement whose terms will be determined by arbitration*. Nothing prevents the parties from submitting their dispute to arbitration under section 34c [now 40(1)] — which explicitly contemplates this process. Moreover, nothing in the Act renders other schemes "illegal". Neither a "non 34c [now 40(1)] agreement" to resort to arbitration, nor a

provision in a collective agreement that the next agreement will be resolved by arbitration, is "illegal" simply because these possibilities are not expressly contemplated in the statute. Such alternatives to industrial conflict may be commendable and even desirable. The question, however, is whether, and how, such provisions can be enforced should one party choose to repudiate their agreement and revert to the statutory conciliation/strike process. The simplicity or industrial relations value of a procedure does not guarantee its legal basis.

(Emphasis in original)

63. Thus, the Board, having the benefit of the Supreme Court of Canada decision in *Bradburn*, cited above, and the Ontario Court of Appeal decision in *Grey-Owen Sound*, cited above, held that a non-section 40(1) interest arbitration provision agreement was not illegal just because it was not expressly contemplated by the statute. As had Brooks J.A. in the *Grey-Owen Sound* Court of Appeal decision, the Board accepted that parties' fashioning alternatives to industrial conflict may be commendable and desirable. The Board's only concern was whether such a provision could be enforced if one party repudiated its' agreement and wished to revert to the statutory conciliation/strike process.

64. In commenting on dispute resolution mechanisms which had been voluntarily agreed to, at paras. 24 and 25 of the decision the Board stated:

24. Section 14 [now 17] permits the parties to *voluntarily construct* binding alternatives to industrial conflict suitable to their own needs. While a party is not forced to abandon its right to resort to the conciliation/strike route, there is no reason why it should not be entitled voluntarily to do so, and, once having voluntarily committed itself, be prevented, except perhaps in exceptional circumstances, from reneging on its bargain. *The Labour Relations Act* need not be viewed as a straitjacket which precludes collective bargaining innovations. And, stripped of its legal complexity, is there anything unusual in a finding that once a party has *voluntarily* committed itself to a mode of bargaining it will be acting in bad faith if it subsequently repudiates the agreement? We do not think so, nor do we think such finding makes section 34c [now 40(1)] redundant. Section 34c (3) [now 40(3)], for example, prevents a termination of bargaining rights. This bar may not be available if one pursues other alternatives. In addition, it may be significant that the Board's authority to interpret and apply section 14 was created at the same time as 34c itself. Both amendments were made in 1975. The jurisprudence was then undeveloped. We do not think it was intended that 34c limit the general language of section 14.

25. Having carefully reviewed the decision of the Court of Appeal in *Grey-Owen Sound*, *supra*, we do not find anything which undermines or contradicts the view which we have taken. On the contrary, our view is entirely consistent with the result which the Court reached and involves neither a perpetual waiver of the right to strike/lock out, nor the co-

existence of two incompatible methods of resolving the current collective bargaining dispute. We do not think that in dealing with the jurisdiction of an arbitrator under section 34c of the Act the Court intended to circumscribe the authority of the Board to interpret and apply section 14 [now 17] of the Act. We find no support for such restriction in any of the decisions of the learned judges.

65. Ultimately the Board found that the employer had violated section 17 of the Act, the duty to bargain in good faith, because it had attempted to repudiate its own commitment to go to interest arbitration, and ordered the employer to cease and desist from threatening or engaging in a lock-out of its employees. The employer was also ordered to comply with the arbitration process that the Court of Appeal had held was lawfully prescribed. (At para. 27 of the decision).

66. I agree with the *Grey-Owen Sound* Board decision that once a party has agreed to a dispute resolution mechanism, it cannot resile from that agreement, except perhaps on agreement or in the most extraordinary of circumstances. In the case before me the City agreed to Article 15.1 many collective agreements ago, and the provision has not been removed either through bargaining or by an interest arbitrator. Hence, it would appear to be binding on the parties.

67. For the reasons outlined above, in response to Question 3 of the Ministerial Reference, and having regard to the *Grey-Owen Sound* Board decision, the Board would be of the view that Article 15.1 envisages the parties referring issues in dispute in bargaining to an interest arbitrator. However, it is still necessary to address the City's arguments about Article 15.1 being a nullity, and that requires that the rest of the jurisprudence be reviewed because despite courts having addressed the validity of such language up to 1979, there was more to come.

68. While the *Grey-Owen Sound* cases which have been referred to here were percolating through various court and board processes, the Haldimand-Norfolk Regional Health Unit situation, which had commenced with the 1978 Ministerial Reference referred to earlier, was also going up through the courts. It would appear that after the Board issued its opinion in the *Haldimand-Norfolk* Ministerial Reference, the employer appointed its nominee to the interest board, and the parties went to interest arbitration. The interest board included in the new collective agreement the interest arbitration clause that the parties had had in the past, but which the employer had objected to having continue. That clause, much like the one in the case before me, made no reference to section 40(1) of the Act.

69. The employer sought judicial review of the interest board's decision. The Divisional Court held that the board lacked jurisdiction, and that its entire award was a nullity. That decision was appealed.

70. *Haldimand-Norfolk Regional Health Unit and Perth District Health Unit*, [1981] O.J. No. 2910 (the "*Haldimand-Norfolk* Court of Appeal decision"), which issued in January 1981, was a unanimous decision of a five judge panel of the Ontario Court of Appeal on both the *Haldimand-Norfolk* lower court decision, and on a similar case between the Perth District Health Unit and the Ontario Nurses Association.

71. The Perth District Health Unit was appealing from a Divisional Court decision which had upheld an interest arbitration board award that had inserted an interest arbitration clause into its next collective agreement. Hence, the Court of Appeal had before it two opposing Divisional Court decisions on the same issue, and in each case it quashed the portion of the award of the board of arbitration which included the interest arbitration provision in the new collective agreement.

72. The Court of Appeal decision was appealed to the Supreme Court of Canada, which in 1983 quashed it, and held that both the Perth and Haldimand-Norfolk interest arbitration boards had the jurisdiction to include interest arbitration provisions in the new collective agreements that they were respectively ordering (*Ontario Nurses' Association v. Haldimand-Norfolk (Region) Health Unit*, [1983] 2 S.C.R. 6, "Haldimand-Norfolk Supreme Court of Canada decision"). Both the Court of Appeal and the Supreme Court of Canada decisions will be discussed below as the parties relied on them, and because they are instructive in the Board's contemplation of the questions before it.

73. Despite the fact that the Ontario Court of Appeal decision in *Haldimand-Norfolk* was overturned on appeal to the Supreme Court of Canada, the court made some comments that are pertinent here. One of the questions the court considered was whether an interest arbitration clause contained in a collective agreement is enforceable at law. Counsel for *Haldimand-Norfolk* made the same argument to the Court as was made by the City to me: that the Act provides a complete code governing collective bargaining in Ontario; that the Act provides for interest arbitration only in the circumstances set out in section 40(1); and, that any provision for interest arbitration in a collective agreement is not authorized by the Act, and is accordingly unenforceable (at para. 31 of the Grey-Owen Sound Court of Appeal decision, cited above).

74. Goodman J.A., writing for the Court of Appeal, noted the *Grey-Owen Sound* Court of Appeal decision, cited above, and other cases which had referred to the labour relations legislation in various provinces as a "code". However, Goodman J.A. did not agree with such a narrow reading, and instead adopted Brooke J.A.'s partial dissent in *Grey-Owen Sound*. He reiterated that all of the decisions to that point had simply supported the position that employers and trade unions could not by their actions or agreement contravene the express provisions of the Act (at para. 40); he noted with approval Brooke J.A.'s opinion that the Act had not been held to be a complete code in the sense that the employer was asserting, and that "the Act should not be construed in a fashion which will restrain those engaged in labour relations in negotiating and settling their differences through collective agreements, save where the Act specifically prohibits or directs a course of conduct" (at para. 41).

75. Goodman J.A. also quoted with approval the portion of Brooke J.A.'s decision where he relied extensively on the Board's 1978 Ministerial reference in *Haldimand-Norfolk*. That decision has been addressed above, and the relevant portion relied upon by the Court outlines the proposition that the scheme of the Act does not require parties to resort to the economic sanctions of strike and lock out as the exclusive methods of impasse resolution, and that the Act does not expressly restrict the use of interest arbitration as a method of impasse resolution.

76. As such, the Court of Appeal stated that it was in agreement with the opinion expressed by Brooke J.A. in the Grey-Owen Sound Court of Appeal decision, and that the parties to a collective agreement may include provisions to settle their differences so long as they were not inconsistent with or in conflict with the Act. The Court specifically stated that parties could include in their collective agreement a provision for settlement by interest arbitration of differences or disputes arising during the course of bargaining for and negotiating a collective agreement (at para. 43).

77. In addressing the question of whether or not parties could agree to give up their respective rights to strike or lockout, Goodman J.A. stated:

49. The rights to strike or lock-out are basic and fundamental rights of the parties to collective bargaining in endeavouring to settle the terms of a collective agreement. They are rights that existed at common law. They are rights that have continued to exist since the passing of the *Labour Relations Act*, subject however to certain restrictions and limitations placed thereon by the Act (see ss. 36 and 63). The scheme of the statute contemplates collective bargaining leading to initial collective agreements and replacement agreements, including the use of conciliation services and the ultimate use of the economic sanctions of strike and lock-out. There is no suggestion in the Act of the imposition without the agreement of the parties, of compulsory arbitration in the settlement of the provisions of a collective agreement respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employer's organization, the trade union or the employees. The Act leaves inviolate the common law right to strike or lock-out subject to the provisions for conciliation procedure and the restrictions with respect to the time at which the parties may resort to such action. *It does not, however, prohibit the parties from agreeing in their collective agreement to resort to compulsory interest arbitration in lieu of resorting to conciliation and the economic sanctions of strike and lock-out, and in our opinion they are free to do so.*

(Emphasis added)

78. Finally, at para. 79 of the decision the Court stated:

79. In so far as the submission that such a clause is contrary to public policy is concerned, we are of the view that it is not contrary to public policy for the parties to a collective agreement to agree voluntarily to submit to interest arbitration matters which are in dispute arising during the course of collective bargaining. That course of action may very well avoid the labour strife and economic suffering of both parties which often results from strike or lock-out. Indeed, as indicated previously, in certain undertakings, the Legislature has made interest arbitration mandatory to settle such disputes.

79. Thus, in the *Haldimand-Norfolk* Court of Appeal decision the Court accepted that parties can agree in their collective agreement to use interest arbitration instead of exercising their respective rights to strike or lock out. Such agreements were found to be legal. However, in the cases before it, the Court of Appeal found that it would have taken the clearest and most specific of wording to authorize the interest arbitration boards to insert into the new agreements an interest arbitration clause that would have the effect of depriving the parties of the right to strike or lock out, and since that was not the case on the facts before it, the Court found that the interest boards had not had the jurisdiction to insert the provisions into the two collective agreements at issue.

80. As noted earlier, the *Haldimand-Norfolk* Court of Appeal decision was appealed to the Supreme Court of Canada. The *Haldimand-Norfolk* Supreme Court of Canada decision, cited above, was a unanimous ruling issued by a seven judge panel of the court in September 1983. Estey J., who had written for the majority in *Bradburn*, cited above, wrote the decision allowing the appeals. He found that the interest arbitration boards had the jurisdiction to hear the cases they had, and that the interest arbitration clause included in the previous collective agreements could properly be included in the award of the new collective agreements. The Supreme Court held that nothing in the language required any subsequent board acting under the new collective agreement to re-impose those clauses, or suggested a perpetual agreement to mandatorily arbitrate a succeeding collective agreement. As such, the Court found that the interest boards' interpretation of the clauses was not only reasonable, but was also correct in law.

81. Although the City had included this decision in its submissions, it argued before me that the *Haldimand-Norfolk* Supreme Court of Canada decision has no application to the matters now before the Board. However, since the City wants to rely on *Bradburn* and the *Haldimand-Norfolk* Court of Appeal decision, the Board must review what the Supreme Court's views were generally on the issues before me, and especially in light of the fact that the Supreme Court overturned the Court of Appeal decision.

82. At pp. 22 and 23 of the decision Estey J. considered the Court of Appeal's reliance on what he had written in *Bradburn*, cited above, (the specific quotation is within the quoted paragraph at para. 47 of this decision). The Court of Appeal had relied on those comments in reaching the conclusion that the interest arbitration provision should not be included in the collective agreement because it would have the effect of withdrawing the rights of the parties to recourse to free collective bargaining and conciliation, and the ultimate exercise of the right to strike or lock-out under the Act. Estey J. distinguished the situation in the *Bradburn* case from the situation in the *Haldimand-Norfolk* and *Perth* cases: He indicated that in the former there had been a patent conflict between two provisions in the collective agreement, and that it was in that context that the Court had made the observation in *Bradburn*. He went on to state at p. 23:

There was a patent conflict between that provision and the preceding subsection of the same article. It was in resolving this impact that the foregoing observations were made by the Court. Here the situation in both collective agreements, as we have seen, is entirely different. In the *Perth* agreement, article 15, the parties agreed "to submit to arbitration all

matters remaining in dispute"; and the Arbitration Board, after hearing and determining such matters in dispute "shall issue a decision setting forth the new collective agreement..." In the Haldimand agreement, article 16, the parties agreed to "submit to arbitration the negotiation of a new agreement ..."; and the Board, after hearing the issues then in dispute "shall herein determine the new collective agreement ..." There is nothing in the agreement to require any subsequent board acting under the new collective agreement to reimpose these contract arbitration clauses. There is no contractual momentum which would inexorably lead to a perpetual agreement to mandatorily arbitrate a succeeding collective agreement. The considerations weighing upon the decision in Bradburn therefore are not here present.

83. The other issue that the Court touched upon that is relevant to the matter before me was the presence in the Act of what is now section 40(1). The employer had argued before the Supreme Court that section 40(1) limited recourse to interest arbitration to only those circumstances that were described in that section, and had relied upon the Ontario Court of Appeal decision in *Grey-Owen Sound*, cited above. Estey J. gave this argument short shrift, and relied on Brooke J.A.'s dissent in part, as follows at p. 26:

Reliance was placed by counsel for the appellant upon the earlier decision by the Court of Appeal of Ontario in *Re Grey-Owen Sound Health Unit and Ontario Nurses' Association* (1979), 24 O.R. (2d) 510. There the Court was concerned with a specific reference to an arbitration board of contract renewal issues directly under s. 34c [now 40(1)]. The various judgments of the members of the Court were principally concerned with the extent of the submission to arbitration, a matter not here in issue. Brooke J.A., dissenting in part, concluded that the provision in the Act was available to parties wishing to settle contract negotiation matters by binding arbitration but it did not represent a code which would restrict the parties from voluntarily acceding to compulsory interest arbitration for contract renewal of an existing collective agreement. It would not appear that the decision in the *Grey-Owen Sound* case is determinative of any of the issues arising under the main appeal here.

84. Thus, to the extent that the Supreme Court was interested in any aspect of the *Grey-Owen Sound* decision, it was to rely upon what Brooke J.A. had had to say about the Act not being a strict code which would preclude parties from voluntarily agreeing to interest arbitration to settle their outstanding issues.

85. Finally, the City relied upon the Board's latest decision regarding section 40(1) of the Act, *The Corporation of the City of Cornwall*, [2007] OLRB Rep. January/February 198 ("City of Cornwall") for the proposition that the Board had relied upon the Supreme Court's decision in *Bradburn*, and not on any of the later jurisprudence. However from a review of the decision it is not clear whether the Board had been provided with any of the later jurisprudence.

86. Unlike the situation in the case before me, in that instance there was a dispute about whether the parties had ever agreed that they would go to interest arbitration under section 40 of the Act or in any other manner. The Board relied upon *Bradburn* for the proposition that it would take the clearest possible language in a collective agreement for a court to find that parties had voluntarily stripped themselves of the opportunity to exercise their rights under the Act, and had agreed to a perpetual agreement (at para. 46 of the decision). The Board found that there had been no agreement to interest arbitration; that the parties' conduct belied the existence of such an agreement; and, that the interest arbitration award that had provided the previous collective agreement had made no reference to interest arbitration.

87. I agree with the Board's view expressed in the *City of Cornwall* decision, but the facts before me are quite different as the City and CUPE do have a very clear provision in their collective agreement regarding referring matters to interest arbitration. Furthermore, the parties before me have argued their case more fully with reference to the panoply of jurisprudence regarding the issues referred by the Minister to the Board. In any event, while the *City of Cornwall* is of limited assistance to me in my consideration of the questions before me, it is noteworthy that at para. 51 of the decision the Board did not preclude the possibility that parties may agree in one round of bargaining that in the next, or possibly more, rounds of bargaining, outstanding issues could be resolved through interest arbitration.

88. Having regard to the considerable jurisprudence and guidance from both the Ontario Court of Appeal and the Supreme Court of Canada, it is clear that the courts do not consider the Act as a complete code such that collective agreements cannot include dispute resolution mechanisms other than those in the Act. Most particularly, the courts have found that the parties can agree to, or an interest arbitrator can order, the inclusion of an interest arbitration provision for the resolution of outstanding bargaining issues.

89. As the Supreme Court, the Ontario Court of Appeal, and the Board have found in the past, section 40 of the Act is not the only method by which parties can refer their outstanding bargaining issues to interest arbitration in circumstances similar to those found in this case. Furthermore, provisions like Article 15.1 have never been found to be examples of contracting out of the Act, and the Board does not find it to be so in this case. As such, Article 15.1 is not a nullity, but rather continues to be a viable provision in the parties' collective agreement.

90. The City argued that a finding that Article 15.1 was an enforceable provision would lead to confusion, chaos and uncertainty, and that the only way in which parties should have recourse to interest arbitration in circumstances similar to those found in this case should be through section 40(1) of the Act. There is no evidence before the Board that in the almost thirty years since the 1983 *Haldimand-Norfolk* Supreme Court of Canada decision, cited above, there has been any confusion, chaos or uncertainty around provisions in collective agreements regarding referral of outstanding matters to interest arbitration.

91. For the reasons outlined above, the Board advises the Minister that since the parties continue to be bound by the terms of the expired collective agreement,

Article 15.1 provides the means by which the parties may refer issues in dispute to an interest arbitrator.

Question 4. a): If the answer to Question 3 is in the affirmative, what effect, if any, does Article 15.1 have on the Minister's power to appoint a conciliation officer pursuant to section 18 of the Act (given that section 40 of the Act in this case cannot be relied upon to prohibit an appointment)?

92. As the Board advised in response to Question 1, the Minister has the power to appoint a conciliation officer pursuant to section 18 of the Act. Since Article 15.1 does not purport to invoke section 40(1) of the Act, sections 40(2) and (3) have no application in these circumstances. Thus, the provisions relating to conciliation, mediation, the open period for a raid or a decertification application, and so on, continue to be applicable. With respect to the strike and lock-out provisions, the parties have agreed in Articles 2.3 and 3.3 of their collective agreement that "during the period of negotiation of any revisions to this agreement or of a new agreement, including the period of arbitration, there shall be no lockout" (Article 2.3) and "there shall be no strike or other cessation of work" (Article 3.3). Thus, it would appear that the parties have agreed to limit their respective strike and lock out rights.

Question 4. b): Does the Minister have the power under the Act to appoint an interest arbitrator where the parties fail to agree on an arbitrator?

93. For ease of reference, Article 15.1 is reproduced again:

15.1 If after bargaining in good faith for the renewal of this agreement, with or without modifications, either party becomes satisfied that an agreement cannot be reached, it will notify the other party in writing of its desire to submit the matters in dispute to arbitration. If the recipient of the said notice and the party desiring arbitration do not, within a period of fourteen (14) calendar days after receipt of the said notice, agree upon a single arbitrator the appointment of the single arbitrator shall be made by the Minister of Labour for Ontario upon the request of either party.

94. As has been outlined above, the City and CUPE have agreed in their collective agreement at Article 15.1 that if certain conditions are met, and the parties are unable to agree on a single interest arbitrator to decide the matters that are still in dispute between them, such an appointment shall be made by the Minister of Labour upon the request of either party. In this instance, on January 25, 2012 CUPE advised the City that it wished to rely upon Article 15.1 and offered three names of arbitrators. As there had been no agreement upon an arbitrator because the City believed that Article 15.1 was a nullity, on February 13, 2012 the Union requested that the Minister, pursuant to section 48(4) of the Act, appoint an arbitrator. As the Board has advised the Minister, it is of the view that this provision is not a nullity, and that it remains extant.

95. Thus, if Article 15.1 is not a nullity, it would appear that there is a dispute, or a difference, between the parties arising out of the application of this provision of the collective agreement in that the City has not provided the names of possible interest arbitrators. As well, despite the agreement of the parties that in the absence of their consensual agreement on an interest arbitrator, either party could ask the Minister to appoint one, the City is objecting to the Minister appointing an arbitrator.

96. The relevant portions of section 48 of the Act state as follows:

Arbitration

48. (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

...

Appointment of arbitrator by Minister

(4) Despite subsection (3), if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make the appointments that are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement.

97. As I had noted earlier, in the *Haldimand-Norfolk Ministerial Reference*, cited above, the Board wrote the following about the nature and status of the collective agreement provision it was dealing with in that case, a provision similar to the one here:

9. ... Agreements to arbitrate contained within a collective agreement are on a different legal footing, being governed by the same legal regime as the collective agreement itself. The agreement to arbitrate, therefore, can be enforced in the same way as any other provision in the collective agreement.

98. However, in that case the Board was of the view that section 48(4) only applied to rights arbitration, and not to interest arbitration, and as such only addressed a failure to appoint a rights arbitrator. Hence, the Board stated that the question was outside its advisory jurisdiction under what is now section 115 of the Act. In my view the Board in the *Haldimand-Norfolk Ministerial Reference* read section 48(4) far too narrowly, in a manner that the language of the section does not support, and without sufficient reference to section 48(1) of the Act.

99. Pursuant to section 48(1) of the Act all differences between parties arising out of the interpretation, application, administration, or alleged violation of the agreement, including issues of jurisdiction, are to be settled by arbitration. In this case, Article 15.1 is a provision of the collective agreement between the City and CUPE, and CUPE is seeking enforcement of that provision. The City has not participated in the choice of an arbitrator, so CUPE has asked the

Minister to make the appointment, in accordance with the agreed-upon language in Article 15.1. In essence, CUPE is seeking enforcement and application of the provision.

100. One of the purposes of the Act is to promote the expeditious resolution of workplace disputes. Section 48(4) of the Act states that where there is a failure to appoint an arbitrator under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator, and any person appointed by the Minister will be deemed to have been appointed in accordance with the collective agreement. Nothing in this provision limits the Minister's authority. The language is extremely broad, and clearly provides the Minister with the power to make an appointment of an arbitrator whenever the parties are unable to agree on the appointment of an arbitrator under their collective agreement. In the particular circumstances of this case, where the City and CUPE had agreed to the language of Article 15.1, and where the Board has found that the article is not a nullity, there cannot be a lacuna in law rendering Article 15.1 unenforceable.

101. As such, in this instance where there has not been agreement on a single arbitrator, and where the parties had agreed that either party could ask the Minister to make such an appointment, it is the Board's advice to the Minister that under the Act she has the power to appoint an interest arbitrator.

Summary

102. To summarize, the Board's advice in response to the Minister's queries is as follows:

Question 1: Article 15.1 of the expired collective agreement does not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act, so there is no impediment to the Minister appointing a conciliation officer.

Question 2: In light of the Board's advice in response to Question 1, it is not necessary to provide the Minister advice on this question.

Question 3: While Article 15.1 does not constitute an agreement of the parties to arbitrate within the meaning of section 40 of the Act, the parties have through this provision voluntarily agreed to refer issues in dispute to an interest arbitrator; the Act does not restrict recourse to voluntary interest arbitration; and the procedure for interest arbitration that the parties have agreed upon in their collective agreement cannot be treated as a nullity.

Question 4 (a): Article 15.1 does not effect the Minister's power to appoint a conciliation officer pursuant to section 18 of the Act.

Question 4 (b): The Minister has the power under the Act to appoint an interest arbitrator where the parties fail to agree on one.

2749-11-ES Gilda Del Castillo, Applicant v. **S. Wilson & Co. Bailiffs Limited** and Director of Employment Standards, Responding Parties

Employment Standards – The Board dismissed the employee’s application for review in which she sought amounts that were beyond those to which she was entitled under the ESA – The employer then sought costs after it prepared for a hearing in which it was entirely successful in a matter for which the employee had no prospect of success – The employer also made the necessary yet costly arrangements to appear after the employee refused to consent to an adjournment – The Board held it could not award costs because it did not have any legislative authority to do so – The ESA does not provide the Board with any authority to award costs, and although the SPPA provides this authority to tribunals where they have made specific Rules, the Board has not made any Rules related to costs – There are sound policy reasons for not awarding costs – The ESA is not meant to punish or deter an individual, who is often self-represented, unsophisticated, or vulnerable, from using the mechanisms provided for in the ESA – Further, any authority to award costs would most likely result in an increase in litigation – Accordingly, the employer’s request was dismissed – Application for review dismissed

BEFORE: *Brian McLean*, Alternate Chair.

DECISION OF THE BOARD: October 2, 2012

1. This is an employee application for review pursuant to section 116 of the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended (the “ESA”).
2. S. Wilson and Co. Bailiffs Limited (the “employer”) operates a bailiff operation. Gilda Del Castillo (the “applicant”) worked as an accounting supervisor for the employer from April 23, 1990 to October 15, 2010. The applicant’s weekly salary was \$803.15.
3. On October 15, 2010, the applicant was temporarily laid off and was not subsequently recalled to work within 13 weeks. She was accordingly deemed terminated on January 14, 2011, pursuant to sections 56(1) (c) and (2)(a) of the *ESA*.
4. The applicant then filed a complaint on the following grounds relevant to this application: termination pay; vacation pay; and severance pay. The Employment Standards Officer (the “Officer”) awarded the applicant eight weeks’ termination pay and vacation pay, but rejected the applicant’s claim for severance pay. The Officer’s calculation of amounts owing totalled \$7511.06 and this amount was paid by the employer.
5. The applicant, nonetheless, seeks to review the Officer’s determination that an Order to Pay in a greater amount should not be ordered. She argues she is entitled to more termination and vacation pay. She also seeks to review the Officer’s decision to deny her severance pay.

Termination Pay

6. The Officer found the applicant was entitled to eight weeks' termination pay in *lieu* of notice under sections 54, 57(h), and 61 of the *ESA*. The applicant was awarded \$6,425.20. However, she argues she should be entitled to more than eight weeks' termination pay to represent her nearly 21 years of service with the employer.

7. Sections 57(1) and 61 of the *ESA* provide that an employee who has been employed for three months or more cannot be terminated without notice of termination of one week per year of service, up to a maximum of eight weeks. A terminated employee with more than eight years of service is nonetheless restricted to the maximum of eight weeks' pay in *lieu* of notice of termination. It is irrelevant under sections 57(1) and 61 of the *ESA* for how much longer the employee had been working for the employer.

8. Accordingly, the employer, having provided the applicant with eight weeks' pay of termination notice, has complied with its obligations under the *ESA*. The applicant's request for termination pay beyond the statutorily-provided maximum is dismissed.

Vacation Pay

9. The applicant appeared to have abandoned her claim for vacation pay above and beyond the Officer's Order to Pay. She did not address the issue during the hearing. Accordingly, her request in this regard is dismissed.

Severance Pay

10. The Officer found the employer was not required to pay severance pay under section 64 of the *ESA*. Particularly, the employer did not have an annual payroll of \$2.5 million or more. In addition, while not at issue, the applicant's employment was not severed because of a permanent discontinuance of all or part of the employer's business at an establishment in which she was one of 50 or more employees who had their employment relationship severed within a six-month period.

11. The applicant claims she is entitled to severance pay as a result of her 21 years' of service, loss of seniority, and the employer's failure to pay her termination pay. She also relied on provisions of the *Canada Labour Code* (the "Code") to justify her position. In particular, section 235(1) of the Code provides that an employee is entitled to severance pay once he or she completes twelve consecutive months of continuous employment with the employer.

12. However, the employment relationship in this case was governed by Ontario's *ESA* and not by the Code. Under the *ESA*, as opposed to the Code, an employee is entitled to severance pay only if one of two conditions are met: (1) The employer has a payroll \$2.5 million or more or (2) the employee's employment, along with at least 49 other employees within a six-month period, had been severed due to a permanent discontinuance of all or part of the employer's business at an establishment. Neither was the case here. The Officer determined the

employer did not have an annual payroll of \$2.5 million or more and the application acknowledged this fact before me. There was also no evidence that 49 other employees (or any other employee) were terminated within the last six months. Because the applicant was not entitled to severance pay under the *ESA*, her request is dismissed.

Disposition

13. Having regard to the above, the application for review is dismissed.

14. At the hearing, counsel for the employer requested that the Board order costs against the applicant. The employer argued it was entitled to costs after it prepared for a hearing in which it was entirely successful in a matter for which the applicant had no prospect of success, and it made the necessary, yet costly, arrangements to appear after the applicant refused to consent to an adjournment.

15. While one could possibly understand the employer's request, the law on the Board's ability to award costs is clear. This Board, like any other statutory tribunal, is a creation of statute. It does not have inherent jurisdiction to fashion its own processes in the absence of a legislative mandate to do so. Its jurisdiction is restricted to that given by statute. The Board must thus look to the *ESA*, or any other legislative source, to determine whether it has the authority to award costs to a party.

16. Determining whether an administrative tribunal has the legislative authority to award legal costs was addressed in the Supreme Court of Canada's decision in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)* 2011 SCC 53. The Supreme Court found that the phrase "[...] that the person compensate the victim, as the Tribunal may consider proper, [...] for any expenses incurred by the victim as a result of the discriminatory practice" did not authorize the Canadian Human Rights Commission to award legal costs. The Commission's award of costs to a requesting party was thus quashed.

17. Similarly, the *ESA* does not provide any authority to the Board to award costs. In an application for review, section 119(6) restricts the Board's powers to those conferred on an employment standards officer under the *ESA*. The employment standards officer's powers are set out in various provisions of the *ESA*, including in sections 89, 91, 93, 101.1-104, 107, 108, 110, 112, and 113. None of these powers allows an employment standards officer to award costs. To be sure, there is also no other provision allowing the Board to award costs despite the officer's inability to do so.

18. Despite the absence of authority in the *ESA*, an administrative tribunal may nonetheless be authorized to award costs pursuant to the *Statutory Powers Procedure Act*, RSO 1990, c S.22 (the "*SPPA*"). Section 17.1 of the *SPPA* allows a tribunal to order a party to pay all or part of another party's costs in a proceeding if such an authority is set out in the tribunal's rules. However, the Board's Rules of Procedure do not provide an award of costs.

19. There are sound policy reasons for an employment standards tribunal, such as the Board, to not award costs to a party under the *ESA*. As the Supreme Court recognized in *Rizzo v Rizzo Shoes* [1998] 1 SCR 27, the *ESA* is a mechanism for providing minimum employment standards and to protect the interests of employees. Many individuals who are self-represented, unsophisticated, or otherwise vulnerable use the *ESA* to enforce employment standards to which they are entitled. There are many unsophisticated employers who frequently misunderstand their obligations. If the Board were to award costs there is a risk of deterring these, and other potential parties, from seeking to enforce a claim. It is true that an employee's misconception of his or her entitlements may be a costly inconvenience to an employer and vice versa. However, the *ESA* is not meant to punish or deter an individual from using the mechanisms provided for in an attempt to pursue what he or she thinks is an entitlement. This is not a result the Board seeks to encourage. Employees and employers alike should feel encouraged to bring forth what they believe to be a meritorious claim without fear of paying the other party's legal costs in the event they are wrong.

20. Further, if the Board were to award costs it would most likely result in an increase in litigation. Parties may begin to argue in what instances costs should be awarded. It would add another point of contention between the parties. More resources would be required. It would defeat the purpose of providing an accessible and relatively straightforward manner to enforce minimum employment standards and benefits.

21. It is presumably for these reasons the Board in *Lin Garden Restaurant* [2004] OESAD No 1218 held the *ESA* does not give the Board authority to award costs. The same was held in *Zarska v. Griffiths International Limited* 2006 CanLII 42033 (ON LRB), where the employer expended considerable cost for a hearing that was abandoned by an applicant who failed to show up to the hearing. The Board affirmed that, despite the circumstances, it could not award costs.

22. Accordingly, for the foregoing reasons, because the Board does not have any legislative authority to award costs under the *ESA* and has made no rule regarding costs pursuant to the SPPA, the employer's request is dismissed.

3396-11-R; 3792-11-U; 3795-11-R United Food & Commercial Workers, Local 206, Applicant v. Tok Transit Limited, Responding Party; Amalgamated Transit Union, Local 113, Applicant v. Tok Transit Limited, The Regional Municipality of York and Bill Fisch, Responding Parties v. United Food & Commercial Workers, Local 206, Intervenor; Amalgamated Transit Union, Local 113, Applicant v. United Food & Commercial Workers, Local 206, Responding Party.

Certification Where Act Contravened – Reconsideration – Remedies – Termination – The Board finds that a trade union seeking to rely on s. 11 relief predicated upon a contravention of the Act must at least file and deliver an application for certification if it expects to obtain a representation vote or remedial certification – Consistent with the scheme of the Act, the remedies available to the Board in subsection

11(2) are only available in circumstances where there is an application for certification – Matter continues

BEFORE: *Patrick Kelly*, Vice-Chair.

DECISION OF THE BOARD: October 31, 2012

1. Board File No. 3396-11-R is an application for certification under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the “Act”). Amalgamated Transit Union, Local 113 (“Local 113”) seeks reconsideration of the decision in that matter granting certification to United Food & Commercial Workers, Local 206 (“Local 206”).

2. Board File No. 3795-11-R is an application for termination brought by Local 113 to terminate Local 206’s bargaining rights on the basis that Local 206’s certificate was obtained by fraud. Board File No. 3792-11-U is an unfair labour practice complaint.

3. By way of a decision August 9, 2012, I granted Local 113 standing as a party in these proceedings. However, I went on to require Local 113 to provide submissions concerning the remedies it seeks pursuant to its request for reconsideration of the decision certifying Local 206. Besides the revocation of Local 206’s certificate and the voiding of its collective agreement with Tok Transit Limited (“Tok Transit”), Local 113 seeks:

- a Board direction to Tok Transit to file a section 8.1 notice in the application for certification, setting out an accurate estimate of the number of employees in the bargaining unit as at the completion of an alleged build-up of the workforce; followed by
- a dismissal of the application for certification under subsection 8.1(5) (because Local 206 did not have at least 40 per cent support of the individuals in the built-up unit);
- followed by the ordering of an additional vote pursuant to section 111(5) of the Act in which the Board permits Local 113 “to be added to the ballot.”

4. At paragraph 27 of the August 9, 2012 decision I wrote:

27. These are highly unusual remedies, to say the least. Even assuming that the Board could or should make one or more or all of the orders/directions/declarations described above, what end would they serve? How could the Board give effect to a vote under subsection 111(5), even one that might go in favour of the ATU, in circumstances where there is no application for certification by anyone, including the ATU (other than, as urged by the ATU, a dismissed UFCW application pursuant to subsection 8.1(5)), or any other proceeding by which the Board could confer representation rights on

the ATU for the bargaining unit currently represented by the UFCW? In other words, where is the Board's jurisdiction to declare the ATU as the bargaining agent? If the Board has no statutory authority to grant that ultimate remedy to the ATU, what is the purpose of the rather convoluted remedial path the ATU wants the Board to follow? Why should the Board not simply refuse to reconsider the decision certifying the UFCW, and leave the question as to whether or not the UFCW certificate should be revoked and its collective agreement declared void for a determination by the Board in the other proceedings that the ATU has brought?

5. The parties made their written submissions concerning the questions raised in the preceding excerpt. Having carefully considered them, I have determined that I ought not to exercise my discretion to reconsider the decision certifying Local 206, for the reasons that follow.

6. Local 113 concedes that the remedies referred to in the bullets in paragraph 3 above are alternative to the main relief, that is revocation of Local 206's certificate. However, Local 113 contends that if the Board determines that the test for fraud or employer interference is not met in this case, it will be critical to determine Local 113's build-up argument. In that regard, Local 113 submits that the Board has the remedial authority to certify the ATU either via a representation vote ordered pursuant to subsection 111(5), or with or without a vote under subsection 11(2) of the Act. Local 113 contends that its application for remedial certification is implicit in its request to be included in any vote that is ordered. In the event of a vote, Local 113 says that it would be unfair and contrary to the purposes of the Act if, having obtained seventeen members from among the Local 206 bargaining unit, it is not on the ballot, but Local 206 is permitted to stand for a second representational vote on the basis of its five membership cards obtained prior to the alleged build-up. In any event, Local 113 submits, the Board ought not to rule out any of its proposed remedies before a full factual and legal inquiry.

7. Section 11 and subsection 111(5) read:

11. (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,

(a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or

(b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.

(2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,

(a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;

(b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or

(c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.

(3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).

(4) On an application made under this section, the Board may consider,

(a) the results of a previous representation vote; and

(b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

...

111. (5) Where the Board determines that a representation vote is to be taken amongst the employees in a bargaining unit or voting constituency, the Board may hold the additional representation votes as it considers necessary to determine the true wishes of the employees.

8. In my view, the flaw in Local 113's argument is that it never filed an application for certification. A trade union seeking to rely on section 11 relief predicated upon a contravention of the Act must at least file and deliver an application for certification if it expects to obtain a representation vote or remedial certification. The language of section 11 supports such an interpretation. As counsel for Tok Transit submits, subsection 11(2) is premised on subsection 11(1). Subsection 11(1) refers to a representation vote (in paragraph (a)) and to an application for certification (in paragraph (b)). Accordingly, the remedies available to the Board in subsection 11(2) are only available in circumstances where there is an application for certification.

9. This interpretation is also consistent with the scheme of the Act, particularly sections 7 to 15 which deal with the establishment of bargaining rights. Apart from voluntary recognition there is no other way under the statute for a trade union intent on directly establishing bargaining rights to do so other than through an application for certification. The Act sets out a number of steps in the certification process. For example, the application for certification must set out a written description of the proposed bargaining unit. It must be accompanied not only by membership evidence, but by a list of the names of the applicant's members. The application has

to be delivered to the employer, and the employer must respond quickly (and, in doing so, is entitled to disagree with any number of features of the application, such as the applicant's estimate of the number of individuals in the proposed bargaining unit and/or the applicant's written description of the unit). Local 113 has not initiated the certification process. It has not identified the bargaining unit for which it seeks representation rights. Tok Transit has not been given any opportunity to assess and respond to a proposed bargaining unit. Nor have the employees of Tok Transit been formally notified, as they would be if an application for certification had been filed, of Local 113's intention to represent them in a defined bargaining unit.

10. These are not mere informalities or technicalities. An application for certification cannot be implied or inferred in the abstract. And it follows that, in the absence of an application for certification, Local 113 cannot avail itself of the remedies under subsection 11(2), or, to put it in a more fundamental way, the Board has no jurisdiction to grant subsection 11(2) relief to Local 113. Nor, in the absence of an application for certification by Local 113 would the Board order a representation vote under subsection 11(5) in which Local 113 appears on the ballot. That would simply be a back-door way of providing subsection 11(2) relief where at least one precondition for such relief - an application for certification - does not exist.

11. None of the authorities cited by Local 113 dealing with section 11 (or its predecessor provision of the Act) assist its argument, since in those cases there was an application for certification before the Board. Those cases are therefore distinguishable from this proceeding.

12. Local 113 cites a couple of Board decisions in which the Board either declined to determine a request for reconsideration ahead of a hearing involving several other applications (*Labourers' Local 183 Members Training and Rehabilitation Fund*, 2011 CanLII 47507 (ON LRB)) or consolidated the request for reconsideration with other related proceedings (*1318359 Ontario Limited c.o.b. as Ryder Logistics*, 2000 CanLII 6564 (ON LRB)). Unlike those cases, I think there is some utility in this matter to decide Local 113's request for reconsideration now, rather than later. One, it may save some hearing time. Second, it may motivate settlement discussion among the parties.

13. In conclusion, in light of the insurmountable obstacle to Local 113's certification by the Board in these proceedings for the reasons set out above, I see no labour relations purpose in Local 113's request for reconsideration of the Board's decision granting certification to Local 206. Therefore, the Board declines to exercise its discretion to reconsider that decision. The request for reconsideration is dismissed.

14. To the extent counsel for The Regional Municipality of York and Bill Fisch intends to pursue a motion to dismiss the application in Board File No. 3792-11-U for failure to disclose a *prima facie* case against his clients, he is directed to file and deliver written submissions on or before November 9, 2012. Local 113 and Local 206 shall have until November 27, 2012 to file and deliver submissions in response. The Regional Municipality of York and Bill Fisch shall have until November 30, 2012 to make reply submissions.

15. The Registrar is directed to schedule the matters in Board Files No. 3792-11-U and 3795-11-R for a hearing after November 30, 2012.

COURT PROCEEDINGS

0854-10-R (Court File No. 200/12) Alliance Environmental and Abatement Contractors Inc. –and– International Union of Painters and Allied Trades Local 1891 and Ontario Labour Relations Board

Judicial Review – Sale of Business – The Board’s decision found there was a sale of business based on an individual being a “key individual” in both the predecessor and new company – The parties agreed the standard of review was reasonableness – The Court found the Board identified the evidence it relied upon for its findings of fact and the line of reasoning that led from these findings of fact to its conclusion – The Court also found the Board’s decision made it clear why it reached the conclusion it did and that it was within a range of reasonable outcomes – Accordingly the *Dunsmuir* test was satisfied – Application dismissed

Superior Court of Justice (Divisional Court), Kiteley, Toscano Rocco and Ducharme JJ., October 15, 2012

DUCHARME J. (ORALLY):

[1] This is an application for judicial review of the decision of The Ontario Labour Relations Board dated February 10, 2012, in which Vice-Chair Silverman found there was a sale of a business pursuant to s.69 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A. The Board’s decision was based on whether Brian Ball was a “key” individual as set out in s.126(5)2 of the *Act* in both the predecessor and new company. The applicant company seeks an order quashing the Vice-Chair’s decision.

STANDARD OF REVIEW

[2] All three parties agree the appropriate standard of review is reasonableness and the reasonableness standard involves a consideration of:

1. the existence of justification, transparency and intelligibility within the decision-making process and;
2. whether the decision falls within a range of possible acceptable outcomes which are defensible in respect of facts and law,

SUBMISSIONS OF THE APPLICANT

[3] The applicant Alliance Environmental and Abatement Contractors Inc. makes a number of submissions as to why the decision of The Vice-Chair should be quashed:

- I. the Vice-Chair made arbitrary findings of fact based on wrong facts, no facts or misapprehension of the evidence.
- II. the Vice-Chair made findings of fact based on evidence that was highly speculative, dubious and vague, and;
- III. the Vice-Chair erred insofar as her reasons failed to disclose a basis for reaching conclusions on evidence that was inconsistent and irreconcilable.

[4] We will deal with each of these in turn.

I. THE VICE-CHAIR MADE ARBITRARY FINDINGS OF FACT BASED ON WRONG FACTS, NO FACTS OR MISAPPREHENSION OF THE EVIDENCE

[5] In this regard the applicant makes two points:

- a. the Vice-Chair's ruling with respect to the delay in bringing the application was based on the misapprehension that B&B had been the non-union arm of the company in previous years when in fact it had been unionized since 1993, and;
- b. the Vice-Chair arbitrarily found that the twenty months following Mr. Ball's departure was the relevant period for assessing whether a substantial disruption to Restoration's business had occurred.

[6] The first of these concerns relates to the decision of the Vice-Chair not to dismiss the application due to delay or as an abuse of process. With respect to this concern it is true that the Vice-Chair did incorrectly refer to B&B as the "non-union arm" of the company, but this does not alter the main point that after the 1999 agreement both companies operated as one.

[7] As for the finding that the twenty months following Mr. Ball's departure was the appropriate period for assessing whether substantial disruption to Restoration's business occurred, this falls directly within the expertise of the Tribunal.

II. THE VICE-CHAIR MADE FINDINGS OF FACT BASED ON EVIDENCE THAT WAS HIGHLY SPECULATIVE, DUBIOUS AND VAGUE

[8] Under this heading the applicant sets out a number of complaints in paragraphs 31-35 of its factum. However, in essence, the applicant's complaint here is how the Board weighed the evidence before it, but, of course, it is not the function of this Court to re-weigh the evidence. The appropriate test of reasonableness here is that set out by Justice Iacobucci in *Law Society of*

New Brunswick v. Ryan 2003 SCC 20 at paragraphs 55 and 56:

55 A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see Southan-i, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see Southam, at para. 79).

56 This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

[Emphasis added]

[9] Applying this test to the reasons for the Board it is obvious that the Vice-Chair identified the evidence that she relied upon for her findings of fact and the line of reasoning that led from these findings of fact to her conclusions. Thus the *Dunsmuir* criteria are satisfied and the submission of the applicant fails.

III. THE VICE-CHAIR ERRED INsofar AS HER REASONS FAILED TO DISCLOSE A BASIS FOR REACHING CONCLUSIONS ON EVIDENCE THAT WAS INCONSISTENT AND IRRECONCILABLE

[10] In assessing this submission it is important to note that the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 has recently determined that "inadequacy of reasons" is not a stand alone basis for reviewing the decision. Rather, as Justice Abella explained at paragraphs 14, 15 and 16:

It is a more organic exercise -- the reasons should be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes.

In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and law". This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion. In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

(Emphasis added)

[11] Applying this approach to the decision of the Vice-Chair it is clear that her reasons set out a chain of reasoning and the findings of fact on which the decision is based. Given these findings of fact there is no question that the decision is reasonableness.

[12] In other words, the reasons of the Vice-Chair make it clear why she reached the conclusion that she did and that her conclusion is within the range of acceptable outcomes. Thus the *Dunsmuir* criteria are hilly satisfied and this submission of the applicant also fails.

[13] The application is dismissed for oral reasons given and, on consent, costs payable by the applicant to the respondent union are fixed in the amount of \$5,000. The Ontario Labour Relations Board is not seeking costs.

1004-08-M (Court File No. 403/11) Greater Essex County District School Board –and– Canadian Union of Public Employees, Local 1348 and the Ontario Labour Relations Board

Employee – Judicial Review – The Board decision found that Human Resources Secretaries working for the applicant School Board were not employed in a confidential capacity in matters relating to labour relations nor exercising managerial functions and were therefore employees for the purposes of the Act – The Court found that the standard of review was reasonableness (the Board was interpreting its home statute and applying it to the evidence), and it was a fact-driven exercise lying within the Board’s expertise – The Court found that the Board reasonably concluded that the test for exclusion relating to labour relations matters requires a demonstration that the employee’s work relates to matters affecting a union representing him or her and that it was reasonable for the Board to identify the mischief to which the legislation was directed as a conflict of loyalty – The Court found the Board’s interpretation of s. 1(3)(b) to be reasonable and its application of this interpretation to the facts was consistent with the Board’s jurisprudence and fully supported by the evidence before it – Concerning the managerial exemption the Board applied its longstanding test, and found consistent with the evidence that the secretaries did not make “effective recommendations” – The reasons, having met the test of transparency, intelligibility and justification, were reasonable – Application for judicial review dismissed

Superior Court of Justice (Divisional Court), Pardu, Swinton and Sloan JJ., October 3, 2012

SWINTON J. (ORALLY)

[1] The applicant seeks judicial review of decisions in which the Ontario Labour Relations Board ("the Board") found that Human Resources Secretaries working for the applicant were not employed in a confidential capacity in matters relating to labour relations nor exercising managerial functions within the meaning of s. 1(3)(b) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A ("the Act"), and therefore they are employees for purposes of the *Act*.

[2] The standard of review is reasonableness, as the Board was interpreting its home statute and applying it to the evidence. The determination of an employee's status is a fact-driven inquiry that lies within the Board's specialized expertise.

[3] The applicant argues that the Board gave an unduly narrow interpretation to s. 1(3)(b) of the *Act* and so applied the wrong test by looking to whether an employee has access to confidential information in relation to the bargaining unit in which the employee would be a member. As well, the Board is said to have erred in its appreciation of the evidence.

[4] The Board considered its longstanding jurisprudence concerning the meaning of s. 1(3)(b) and applied it to the facts. The Board reasonably concluded that the test for exclusion arising because an employee acts in a confidential capacity in matters relating to labour relations requires a demonstration that the employee's work relates to matters affecting a union representing her or him. The Board stated (at para. 38):

Since the decision in *Comtech*, the jurisprudence clearly and consistently requires that in order for an individual to be excluded pursuant to section 1(3)(b), the confidential capacity regarding labour relations in which they are employed must relate to the bargaining unit in which the individual at issue would be or is a member.

[5] It was entirely reasonable for the Board to identify the mischief to which the legislation was directed as a conflict of loyalty. The Board concluded at para. 41 of its reasons:

In my view, the divided loyalties which are to be avoided are a loyalty to the employer, and a loyalty to oneself, in that the bargaining unit represents the employee's interests. In other words, the "tension" to be avoided is that between the employer's interest and the employee's self interests. In this instance, there was no indication that the Human Resources Secretaries had any self interest that would be related to any of the other bargain [*sic*] units the School Board deals with i.e. Ontario Secondary School Teachers' Federation ("OSSTF"), Canadian Union of Public Employees, Local 27 ("CUPE Local 27"); and Elementary Teachers' Federation of Ontario ("ETFO").

[6] The Board's interpretation of s. 1(3)(b) is reasonable and consistent with the language of the *Act* and its purpose. The Board properly held that exemptions should be interpreted narrowly.

[7] In applying the test, the Board carefully considered the duties of the Human Resources Secretaries and gave detailed reasons for its conclusions. It drew a distinction between confidential personnel information obtained by the secretaries and information confidential to labour relations. That distinction is consistent with the decision of the Supreme Court of Canada in *CLRB v. Transair Limited and Canadian Association of Industrial Mechanical and Allied Workers*, [76 CLLC 14,024], to which the Board made reference at para. 29 of its reasons.

[8] The applicant takes particular issue with the Board's failure to find that Ms. Krneta was employed in a confidential capacity because she dealt with benefits for all bargaining units including Local 1348. As well, the secretaries worked as a team and at times might have to fill in for the excluded secretary working for the Human Resources Officer responsible for Local 1348.

[9] The Board dealt carefully with these arguments in both the initial and reconsideration decisions. Ultimately, the Board concluded that any actual involvement in labour relations relating to Local 1348 was too occasional or incidental to warrant exclusion under s. 1(3)(b). This finding was consistent with the Board's jurisprudence and fully supported by the evidence before the Board.

[10] With respect to the issue whether the employees performed managerial functions, the Board applied its longstanding test, asking whether the secretaries have the power of "effective recommendation" that materially affects the working conditions of other employees. The Board found, consistent with the evidence, that the secretaries do not make "effective recommendations." We see no reason to interfere with that conclusion.

[11] Even if the Board erred in saying that the employees "remain members of CUPE Local 1348" (as CUPE concedes), that statement has no impact on the decision as a whole. The Board clearly found that the secretaries were not excluded from collective bargaining by s. 1(3)(b) of the *Act*. The decision was reasonable, given the evidence and the words of the *Act*.

[12] The Board's reasons met the requirements of transparency, intelligibility and justification and, given the evidence before it, the decisions were reasonable. Accordingly, the application for judicial review is dismissed.

PARDU J. **COSTS**

[13] On behalf of the panel I have endorsed the Application Record, "The application is dismissed for reasons given orally. Costs to respondent CUPE fixed at \$5,000."

0460-10-U (Court File No. 11-1764) René Gagné –and– Ontario Labour Relations Board

Apprehension of Bias – Duty of Fair Representation – Judicial Review – The Applicant sought judicial review of a decision of the OLRB which dismissed the

Applicant's complaint that the Algoma University Faculty Association had breached its duty of fair representation – The Board found that the Association properly evaluated the circumstances of the Applicant's grievances, and did not breach its duty of fair representation in responding to those complaints – The Court accepted that the standard of review for the Board's decision was reasonableness, and found that the Board's dismissal of the application was reasonable – The Board was not required to hold an oral hearing – It was the Applicant's responsibility to present the necessary facts to the Board in the complaint or reply – The Applicant alleged that the Board lacked impartiality, however, the fact that the Vice-Chair of the Board had decided another application of the Applicant did not demonstrate any partiality – The Court found no evidence that the Board failed to respect the language rights of the Applicant – Application dismissed

Superior Court of Justice (Divisional Court), Roy, Swinton and R. Smith JJ., October 17, 2012

INSCRIPTION

[1] Il s'agit d'une requête en révision judiciaire d'une décision de la Commission des relations du travail de l'Ontario (la « Commission ») en date du 27 juillet 2011. La Commission a rejeté la plainte du requérant que l'Algoma University Faculty Association (l'« Association ») avait enfreint l'article 74 de la *Loi de 1995 sur les relations du travail*, L.O. 1995, chap. 1, Annexe A, parce que les allégations plaidées ne démontraient pas de violation *prima facie* de l'article 74, le devoir de représentation.

[2] La Commission a dit au paragraphe 12 de ses motifs :

Il ressort très clairement du plaidoyer de M. Gagné que le syndicat était au courant des circonstances entourant ses griefs en 2009 et qu'il les avait évaluées. Il ne serait ni raisonnable ni défendable que la Commission puisse juger que le syndicat, en raison de sa réaction aux griefs tels que présentés par M. Gagné, a agi de manière « peu vraisemblable », « irresponsable au point de ne pas être digne de protection », « déraisonnable », « abusive », « négligente » ou « démontrant une attitude dépourvue de bienveillance ». En outre, malgré la conviction de M. Gagné que ses démêlés avec l'université et avec le syndicat ont mené le syndicat à exercer des représailles à son endroit et à agir de manière discriminatoire concernant les préoccupations qu'il avait exprimées en 2009, la Commission ne peut conclure à l'existence d'une infraction à l'article 74 de la Loi en se fondant sur les faits allégués par M. Gagné. La requête telle qu'elle a été plaidée n'a aucune chance raisonnable d'aboutir.

[3] La norme de contrôle de la révision sur le fond est celle de la décision raisonnable.

[4] Le requérant fait valoir que la Commission a erré en appliquant de manière injustifiable les principes de la common law de la chose jugée, de l'irrecevabilité relevant de l'identité d'une question en litige et l'abus de procédure. Nous rejetons cet argument. La décision est basée sur la conclusion que le requérant n'a pas établi le bien-fondé *prima facie* de sa requête devant la

Commission. Les commentaires dans la décision préliminaire en date du 11 mai 2011 n'étaient pas la raison pour la décision de rejeter sa requête.

[5] La Commission a examiné les allégations dans les plaidoiries du requérant et a conclu que la requête n'était pas fondée, même si tous les faits allégués étaient réputés véridiques. Elle a considéré les critères dans l'article 74. La décision est raisonnable, compte tenu des plaidoiries, la jurisprudence concernant l'article 74, et la lettre détaillée de l'Association datée le 4 août 2009 (Annexe 19 de la plainte) qui démontre qu'une enquête raisonnable a eu lieu.

[6] La Commission n'était pas obligée de tenir une audience afin de permettre au requérant d'obtenir la preuve nécessaire. D'après nous, il incombait au requérant de présenter les faits nécessaires dans sa plainte ou dans sa lettre de réponse du 25 mai 2011 afin d'établir le bien-fondé *prima facie* de sa plainte.

[7] De plus, le requérant allègue que la Commission n'a pas respecté les règles d'équité procédurale. Il fait valoir que la Commission manquait d'impartialité réelle ou apparente. Le requérant n'a pas soulevé cet argument devant la Commission, ce qui aurait été préférable.

[8] Néanmoins, le requérant n'a pas démontré qu'une personne raisonnable et bien informée croirait que la Commission ne rendrait pas une décision juste. Le fait que la vice-présidente de la Commission avait tranché une autre requête du requérant ne montre pas une réelle probabilité de partialité.

[9] Le requérant allègue que la Commission n'était pas impartiale parce que la vice-présidente a fait un commentaire sur le « mauvais jugement » du requérant. Ce commentaire a été considéré hors contexte par le requérant. La Commission commentait seulement le fait que le requérant n'avait pas choisi le forum approprié pour remédier à certaines allégations soulevées par sa requête.

[10] Le requérant fait valoir que la Commission n'a pas respecté des droits linguistiques. À notre avis, il n'y a aucune preuve que la Commission n'a pas respecté les droits linguistiques énoncés dans la *Loi sur les services en français*, LRO 1990, chap. F.32. Il a eu le droit de s'adresser à la Commission en français. La vice-présidente de la Commission était bilingue, et il a reçu une copie de chaque décision en français.

[11] Le requérant allègue que ses droits n'ont pas été respectés lors d'un processus de consultation au sujet de sa première requête de 2008 contre l'Association. Toutefois, cette requête en révision judiciaire concerne la requête de 2010 contre l'Association.

[12] Pour ces motifs, la requête en révision judiciaire est rejetée. Si les parties ne peuvent pas s'entendre au sujet des dépens, elles peuvent déposer de brèves représentations écrites d'ici 15 jours.

[TRANSLATION]**ENDORSEMENT**

1. The application is seeking a judicial review of a decision of the Ontario Labour Relations Board (hereinafter referred to as "the Board") dated July 27, 2011. The Board dismissed the applicant's complaint that the Algoma University Faculty Association (hereinafter referred to as "the Association") breached section 74 of the Labour Relations Act, 1995, S.O., 1995, Chap. 1, Schedule A, because the pleaded allegations did not demonstrate a prima facie breach of section 74, the duty of fair representation.

2. In paragraph 12 of the reasons for its decision, the Board indicated that:

[TRANSLATION] It is very clear from Mr. Gagné's submission that the union was aware of the circumstances surrounding his grievances in 2009 and that the union had evaluated them. It would neither be reasonable nor defensible for the Board to conclude that the union, due to its reaction to the grievances filed by Mr. Gagné, acted in a manner that was "implausible", "irresponsible to the point of being unworthy of protection", "unreasonable", "abusive", "negligent" or which "demonstrated an attitude lacking in goodwill". Moreover, despite Mr. Gagné's conviction that his conflicts with the university and with the union prompted the union to retaliate against him and to act in a discriminatory manner with respect to the concerns that he had expressed in 2009, the Board cannot conclude that there was any breach of section 74 of the Act based on the facts alleged by Mr. Gagné. The application, as pleaded, has no reasonable chance of succeeding.

3. The standard for a review based on the merits is that of a reasonable decision.

4. The applicant claims that the Board erred by unjustifiably applying the common law principles of res judicata, issue estoppel and abuse of process. We reject this argument. The decision is based on the conclusion that the applicant did not establish the prima facie merit of his application before the Board. The comments provided in the preliminary decision dated May 11, 2011 did not constitute the reason for the decision to dismiss his application.

5. The Board reviewed the allegations made in the applicant's submissions and concluded that the application was without merit, even if all the alleged facts were deemed to be true. It considered the criteria provided in section 74. The decision is reasonable, based on the submissions, the case law concerning section 74 and the detailed letter from the Association, dated August 4, 2009 (Appendix 19 of the complaint), which demonstrate that a reasonable investigation was conducted.

6. The Board was not required to hold a hearing in order to enable the applicant to obtain the necessary evidence. In our opinion, it was the applicant's responsibility to present the necessary facts in his complaint or in his reply letter of May 25, 2011, in order to establish the prima facie merits of his complaint.

7. The applicant also alleges that the Board did not comply with the rules of procedural fairness. He claims that the Board lacked actual or apparent impartiality. The applicant did not raise this argument before the Board, which would have been preferable.

8. Nevertheless, the applicant has not demonstrated that a reasonable and well-informed person would believe that the Board had failed to deliver a just decision. The fact that the Vice-Chair of the Board had decided another application submitted by the applicant does not demonstrate any real probability of partiality.

9. The applicant alleges that the Board was not impartial because the Vice-Chair made a comment about the applicant's "bad judgment". This comment was considered out of context by the applicant. The Board was only commenting on the fact that the applicant had not chosen the appropriate forum to resolve certain allegations made in his application.

10. The applicant claims that the Board did not respect language rights. In our opinion, there is no evidence that the Board failed to respect the language rights provided in the French Language Services Act R.S.O. 1990, chap. F.32. He had the right to address the Board in French. The Vice-Chair of the Board was bilingual and he received a copy of each decision in French.

11. The applicant alleges that his rights were not respected during a consultation process related to his initial application against the Association in 2008. However, this application for a judicial review concerns the application filed against the Association in 2010.

12. For these reasons, the application for a judicial review is dismissed. If the parties cannot agree on the disposition of costs, brief written submissions may be filed within 15 days.

1953-07-ES (Court File No. 613/10) Richard Hotta, a director of Proteus Craftworks Inc.—and—Ontario Labour Relations Board and the Parties Listed on Appendix A

Employment Standards – Judicial Review – The applicant sought judicial review of a Board decision in which the Board dismissed an application for review of an order to pay outstanding wages and vacation pay pursuant to the directors' liability provisions of the ESA – As a result of the applicant's failure to appear at the hearing, the Board treated his application as abandoned and confirmed the order to pay as made against him – At the judicial review hearing, the applicant argued he was denied procedural fairness because he was not able to address the amounts owing – He also argued the Board made mathematical errors in calculating the sum he was ordered to pay – The standard of review when the Board is interpreting the ESA is reasonableness – The Divisional Court found there was no procedural unfairness – Despite the applicant's effort to characterize the Board's actions as a denial of procedural fairness, he was in substance attacking the merits of the Board's decision to dismiss his application for review as abandoned – The Board's Rules of Procedure provide that where a person has received written notice of a hearing and fails to

attend, the Board may decide an application without further notice to the person and without considering any documentation that the person may file at a later date – The applicant did not request an adjournment from the Board and the evidence showed that he knew how to contact the Board – In the circumstances, the Board reasonably proceeded in the applicant's absence – Application for judicial review dismissed

Superior Court of Justice (Divisional Court), R.S.J. Brown, Matlow and Swinton JJ., September 25, 2012

SWINTON J. (ORALLY)

[1] The applicant, Richard Hotta, seeks judicial review of a decision of the Ontario Labour Relations Board dated August 27, 2010, in which the Board rejected a request for reconsideration of a decision dated December 7, 2009.

[2] In the December decision the Board had dismissed the application brought by the applicant and another director of a defunct company for review of an order to pay outstanding wages and vacation pay pursuant to the directors' liability provisions of the *Employment Standards Act*, S.O. 2000, c. 41 ("the Act").

[3] The applicant had failed to appear for the December hearing and had not notified the Board that he sought an adjournment because of illness, although he had told the lawyer for the Director of Employment Standards of the Ministry of Labour that he was ill. As a result of his failure to appear, the Board treated his application as abandoned and confirmed the order to pay made against him in the amount of \$16,137.31.

[4] The applicant did not seek formal reconsideration of that decision, although he had sought reconsideration of an earlier Board decision in June, 2009. However, a group of employees sought reconsideration in order to challenge the quantum of outstanding wages payable by the applicant. Their request was rejected in the decision that is the subject of this application for judicial review.

[5] The applicant argues that he was denied procedural fairness in that he has not been able to address the issue of the amounts owing. He also argues that the Board made mathematical errors in calculating the sum he was ordered to pay.

[6] The standard of review is reasonableness when the Board is interpreting the *Employment Standards Act* (see s.119(14) of the Act and *Abdoulrab v. Ontario (Labour Relations Board)*, 2009 ONCA 491 (CanLII), 2009 ONCA 49 at paras. 46-47).

[7] Despite the applicant's effort to characterize the Board's actions as a denial of procedural fairness, in substance he is attacking the merits of the Board's decision to dismiss his application as abandoned. In this case the applicant did not request an adjournment from the Board, although he had informed the Director's counsel that he felt ill. His June 2009 letter to the Board shows that he knew how to contact the Vice Chair of the Board.

[8] Rule 38.6 of the Board's *Rules of Procedure* provides that where a person has received written notice of a hearing and fails to attend, the Board may decide the application without further notice to the person and without considering any documentation that the person may file at a later date.

[9] In the circumstances, the Board reasonably proceeded in the applicant's absence. In the absence of any argument made about the propriety of the order under review, the Board reasonably confirmed the order to pay made by the Employment Standards Officer.

[10] It is telling that the applicant did not make a timely request for reconsideration on the grounds that he was treated unfairly because the Board proceeded in his absence (see para. 17 of the Board's August 27, 2010 order).

[11] We are not satisfied that there has been any procedural unfairness here. Accordingly, the application for judicial review is dismissed.

COSTS

R. S. J. BROWN

[12] On behalf of the panel, I have endorsed the Application Record, "For oral reasons given, the application for judicial review is dismissed. No order as to costs."

1786-09-ES (Court File No. 506/10) Mr. Shah Islam –and– J. Ennis Fabrics Ltd., Director of Employment Standards and Ontario Labour Relations Board

Employment Standards – Judicial Review – The applicant sought judicial review of a Board decision dismissing his appeal as untimely (six months after the order to pay was served) – The applicant had faxed a request to the Director of Employment Standards, rather than the Board, within 30 days advising he wished to file an appeal – The Court dismissed the claim that there was a breach of natural justice based on systemic bias, as there was no evidence on the record to support such a claim – The Court found the Board's decision that the appeal was untimely to be reasonable – The applicant had failed to file a timely application for review and failed to provide a reasonable explanation for his failure to do so, and the Board's application of these factors was reasonable – Application dismissed

Superior Court of Justice (Divisional Court), Jennings, Polowin and Winton-Siegel JJ., June 4, 2012

BY THE COURT

[1] The applicant seeks judicial review of a decision dated September 29, 2009 of the Ontario Labour Relations Board ("the Board") dismissing his application for a review of a

refusal of the delegate of the Director of Employment Standards dated March 20, 2009 to issue an Order to Pay to the applicant's former employer, J. Ennis Fabrics Ltd., on the grounds that it was not timely. He also seeks a review of reconsideration decisions of the Board dated October 27, 2009 and November 18, 2009.

Background

[2] The applicant filed a complaint seeking termination pay under the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("the *Act*"). The applicant was served with a letter advising of the refusal to issue an Order to Pay on March 20, 2009. Subsection 116(4) of the *Act* requires that an application for review of a refusal to issue an Order to Pay be made to the Board within thirty days after the date of the letter advising of the refusal to issue an Order to Pay is served. Subsection 116(5) provides that the Board may extend the time for applying for a review if it considers it appropriate in the circumstances.

[3] The applicant did not file an application for review until September 16, 2009. The letter advising the applicant of the refusal to issue an Order to Pay advised the applicant of the time limit in s.116(4) for filing an application for review. The applicant says that on April 17, 2009 he faxed a request to the delegate of the Director of Employment Standards advising that he wished to file an application for review of her refusal to issue an Order to Pay. He says the delegate did not reply to his faxed request within the thirty-day period and he assumed that he was thereby entitled to treat the limitation period as extended. It appears he received a copy of the form on or about September 4, 2009.

[4] In its decision of September 29, 2011, the Board refused to exercise its discretion under s.116(5) on the ground that the applicant failed to demonstrate extenuating circumstances. It also concluded that there was nothing on the facts of this case to rebut the presumption in cases of delay that there is real prejudice to the administration of justice and to the Director of Employment Standards.

[5] The applicant sought reconsideration of the decision stating, among other things, that he contacted the Board shortly after receipt of the delegate's letter on March 20, 2009 to request an application form. The request for reconsideration was refused on October 27, 2009. The Board concluded that there was nothing raised in his submissions seeking a further reconsideration that was not raised in his earlier submissions nor were there any additional facts raised that would cause the Board to reconsider its decision. The applicant sought a further reconsideration of the decision which was refused on November 18, 2009 for the same reasons as the previous request for a reconsideration was denied.

[6] We would note that the applicant's notice of application for judicial review refers only to a decision "dated 27, 2009 followed by similar one dated November 17, 2009" although the application record includes the Board's decision and reconsideration decisions described above and the oral argument before this Court also addressed these three decisions. Accordingly, we have proceeded on the basis that the application for judicial review relates to all three decisions.

The Issues Raised in this Application

[7] The applicant submits that he was denied natural justice. In addition, he submits that the Board erred in refusing to exercise its discretion under s.116(5) to extend the time period for his application for review.

The Standard

[8] With respect to the issue of natural justice, the court need not determine the standard of review. Rather, the court must decide if the requisite fairness was afforded. It is well-established that the standard of review from a decision of the Board is reasonableness. This standard also applies in respect of the reconsideration decisions of the Board.

Was there a Denial of Natural Justice?

[9] We have carefully reviewed the detailed submissions of the applicant, both to the Board in respect of his application for review and applications for reconsideration and to this Court in respect of this application for judicial review.

[10] The applicant's claim that he has been denied natural justice is based on an assertion that there has been systemic bias applied throughout the various proceedings arising out of his termination, particularly since the commencement of the criminal proceedings against him. In this regard he alleges that the Vice-Chair of the Board was pressured to reach her decisions in this matter by unknown Crown representatives. We find no evidence in the record before us to support this allegation. Accordingly, we find there was no denial of natural justice by the Board.

Was the Board's Decision Reasonable?

[11] In paragraph 5 of the decision, the Vice-Chair properly reviewed the factors considered relevant by the Board in the exercise of its discretion under s.116(5). The applicant does not deny that he was advised of the thirty-day time limit for filing an application for review in the letter advising of the refusal to issue an Order to Pay. As the Board observed, the applicant had the responsibility for filing a timely application for review.

[12] The only evidence before the Board was the applicant's alleged fax of April 17, 2009, on the 28th day of the thirty-day period. The applicant failed to file in timely fashion and failed to provide a reasonable explanation for his failure to do so. The decision of the Board applied the factors described above to the present circumstances in a reasonable manner.

[13] In our view, the decision satisfies the test for reasonableness required of the Board.

The Reconsideration Decisions

[14] In each of the reconsideration decisions, the Board concluded that the applicant's request for reconsideration failed to set out any new facts or arguments that would warrant a reconsideration of the decision.

[15] In our view, the Board's reconsideration decisions are also reasonable and are entitled to deference by this Court.

Conclusion

[16] For these reasons, the application for judicial review is dismissed.

BY THE COURT **COSTS**

[17] In our opinion, the issues were simple. The respondent company was not called upon and, given the circumstances explained to us by Mr. Shah Islam, the principles of *Boucher v. Public Accountants Council for the Province of Ontario* [2004] O.J. No. 2634 (C.A.) would be satisfied by a cost award of \$2,000.00.

[18] We have endorsed the Application Record, "Application is dismissed for oral reasons of the Court delivered today. Costs payable by Mr. Shah Islam to Ennis fixed at \$2,000.00 inclusive."





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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING AUGUST 2012

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

2792-10-R: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. Drain Land Inc. (Respondent)

Unit: "all construction labourers in the employ of Drain Land Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Drain Land Inc. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

1022-12-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Jaymar Plumbing 2001 Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Jaymar Plumbing 2001 Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Jaymar Plumbing 2001 Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (13 employees in unit)

1125-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Provincial Concrete Forming Limited (Respondent)

Unit: "all construction labourers in the employ of Provincial Concrete Forming Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Provincial Concrete Forming Limited in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1320-12-R: Sheet Metal Workers' International Association Local 47 (Applicant) v. 3232298 Canada Inc. o/a Tricrest Roofing and Waterproofing (Respondent)

Unit: "all roofers and roofers' apprentices in the employ of 3232298 Canada Inc. o/a Tricrest Roofing and Waterproofing in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all roofers and roofers' apprentices in the employ of 3232298 Canada Inc. o/a Tricrest Roofing and Waterproofing in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save

and except non-working foremen and persons above the rank of non-working foreman" (14 employees in unit)

1322-12-R: Canadian Construction Workers Union (Applicant) v. Concrete Construction & Restoration/1560750 Ontario Inc. (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervener)

Unit: "all carpenters and carpenters apprentices, rodmen and rodmen apprentices and construction labourers in the employ of Concrete Construction & Restoration /1560750 Ontario Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham save and except non-working foremen and persons above the rank of non-working foreman and persons covered by a subsisting collective agreement binding Concrete Construction & Restoration /1560750 Ontario Inc. and Labourers' International Union of North America, Local 183." (5 employees in unit)

1361-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Blandford Construction Services Inc. (Respondent)

Unit: "all construction labourers in the employ of Blandford Construction Services in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman." (2 employees in unit)

1368-12-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Bas Contractors Inc. c.o.b. as Bas Fire Protection Services (Respondent)

Unit: "all sprinkler fitters and sprinkler fitters' apprentices in the employ of Bas Contractors Inc. c.o.b. as Bas Fire Protection Services in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all sprinkler fitters and sprinkler fitters' apprentices in the employ of Bas Contractors Inc. c.o.b. as Bas Fire Protection Services in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1372-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Done Rite Construction Inc. and, Done Rite Design Construction (Respondent)

Unit: "all construction labourers in the employ of Done Rite Construction Inc. and Done Rite Design Construction in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Done Rite Construction Inc. and Done Rite Design Construction in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (17 employees in unit)

1374-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Superior Waste Recovery Inc. (Respondent)

Unit: "all construction labourers in the employ of Superior Waste Recovery Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Superior Waste Recovery Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non working foremen and persons above the rank of non-working foreman" (7 employees in unit)

1383-12-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union 598 (Applicant) v. Genov Restoration Inc. (Respondent)

Unit: "all masonry restoration employees in the employ of Genov Restoration Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all masonry restoration employees in the employ of Genov Restoration Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

1427-12-R: Ironworkers District Council of Ontario (Applicant) v. Alien Welding Ltd. (Respondent)

Unit: "all iron workers and iron worker apprentices in the employ of Alien Welding Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all iron workers and iron worker apprentices in the employ of Alien Welding Ltd. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1483-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. A. Van Egmond Construction Ltd. (Respondent)

Unit: "all other affiliated bargaining agents of The Labourers' International Union of North America and the Labourers' International Union of North America, Ontario Provincial District Council in respect of all construction labourers in the employ of A. Van Egmond Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of A. Van Egmond Construction Ltd. in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

1522-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bracol Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of Bracol Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Bracol Construction Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1537-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Lewitt Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of Lewitt Construction Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Bargaining Agents Certified Subsequent to Vote

2623-09-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Eagle Plumbing Contractors Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Eagle Plumbing Contractors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Eagle Plumbing Contractors Inc. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

0321-12-R: Ontario Public Service Employees Union (Applicant) v. Orillia Soldiers' Memorial Hospital (Respondent)

Unit: "all paramedical Medical Laboratory, Cytology, Diagnostic Imaging (including CT, MRI, Nuclear Medicine, Ultrasound and Radiology), Dialysis, Pharmacy and Cardiology technologists, technicians and assistants employed by Orillia Soldiers' Memorial Hospital in the City of Orillia, save and except supervisors and persons above the rank of supervisor, Pharmacists, students in training, students employed during the vacation period and persons covered by subsisting collective agreements" (111 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	98
Number of persons who cast ballots	98
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	97
Number of segregated ballots cast by persons whose names appear on voter's list	103
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	55
Number of ballots marked against applicant	43
Number of ballots segregated and not counted	0

1014-12-R: UNITE HERE Local 75 (Applicant) v. The Strathcona Hotel (Respondent)

Unit: "all part-time employees (employees regularly employed for not more than twenty-four (24) hours per week) of 1310866 Ontario Limited c.o.b. as The Strathcona Hotel located at 60 York Street in the City of Toronto, save and except supervisors, persons above the rank of supervisor, students employed during school vacation periods, maintenance employees, and full-time employees and employees of the Tavern who are already represented by UNITE HERE Local 75" (43 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	46
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

1076-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Limen Group Ltd. (Respondent) v. Brick and Allied Craft Union of Canada (on its own behalf and on behalf of its affiliated Local Unions 1, 2, 4, 5, 10, 12, 20, 23, 28, 29, 31) (Intervener)

Unit: "all journeymen and apprentice bricklayers, stonemasons, plasterers and improvers in the employ of Limen Group Ltd. in all sectors of the construction industry in the Province of Ontario, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1229-12-R: Labourers' International Union of North America, Local 625 (Applicant) v. Veolia Environmental Services (Respondent) v. International Union Of Painters And Allied Trades, Local 1494 (Intervener)

Unit: "all full-time employees engaged in hydro-jet and wet and dry vacuum cleaning, and all work incidental to the foregoing, while working in and out of the shop and office in Windsor, save and except non-working foremen, persons above the rank of non-working foreman, office staff and sales staff" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1251-12-R: UNITE Here Local 75 (Applicant) v. Hotels of Islington Ltd. O.A. Quality Hotel and Suites Airport East (Respondent)

Unit: "all employees of Hotels of Islington Ltd. O.A. Quality Hotel and Suites Airport East located at 2180 Islington Avenue in the City of Toronto, save and except supervisors and person above the rank of supervisor who exercise managerial authority and are therefore exclusive from the Act and also excluding all employees working for Airport East Restaurants Limited" (33 employees in unit)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1270-12-R: The Professional Institute of the Public Service of Canada (PIPSC) (Applicant) v. Hamilton Health Sciences Corporation, c.o.b. as Juravinski Cancer Centre (Respondent)

Unit: "all employees of the Juravinski Cancer Centre in the City of Hamilton employed in the following classifications: Radiation Therapists and Dosimetrists, save and except supervisors, persons above the rank of supervisor, and persons in bargaining units for which any trade union held bargaining rights as of July 26, 2012" (106 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	106
Number of persons who cast ballots	82
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	81
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	59
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	1

1287-12-R: Canadian Union of Public Employees (Applicant) v. Pembroke Public Library (Respondent)

Unit: "all employees employed by the Pembroke Public Library in the City of Pembroke, Ontario save and except CEO and persons above the rank of CEO and students employed during the summer vacation period" (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1

Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1311-12-R: Hospitality & Service Trades Union, Local 261 (Applicant) v. Compass Group Canada Ltd - Museum of Nature (Respondent)

Unit: "all employees of the Company employed at the Museum of Nature, 240 McLeod Street, Ottawa, Ontario, save and except chefs, sales staff, supervisors, persons above the rank of supervisor, office and clerical staff" (16 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

1352-12-R: Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. Olympic Floor Cleaning Inc. (Respondent)

Unit: "all employees of Olympic Floor Cleaning Inc., engaged in cleaning and maintenance at 300, 302, 304 The East Mall in the City of Toronto, save and except office and clerical employees, sales representatives, supervisors and those above the rank of supervisor" (19 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1373-12-R: Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. The Law Society of Upper Canada (Respondent)

Unit: "all employees of The Law Society of Upper Canada, employed as security guards at 130 Queen Street West in the City of Toronto, save and except supervisors and those above the rank of supervisor" (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12

Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

1389-12-R: Canadian National Federation of Independent Unions (Applicant) v. 1084408 Ontario Inc. o/a Superior Facility Services (Respondent)

Unit: "all employees of 1084408 Ontario Inc. o/a Superior Facility Services at 1242 Oakcrossing Road, London, Ontario, save and except supervisors and employees above the rank of supervisor" (45 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	40
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1395-12-R: Grand River Valley Health Care Employee's Union Local 305 affiliated with the Christian Labour Association of Canada (Applicant) v. Charlotte Villa Retirement Living (Respondent) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Intervener)

Unit: "all employees of Charlotte Villa Retirement Residence, 120 Darling Street in the City of Brantford, Ontario, save and except supervisors, persons above the rank of supervisor, and office and clerical staff" (43 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	42
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	0
Number of ballots marked in favour of intervener	10
Number of ballots segregated and not counted	1

1442-12-R: Ontario Nurses' Association (Applicant) v. Trinity Village Care Centre (Respondent)

Unit: "all Registered Nurses and Registered Nurses with a Temporary Certificate of Registration employed in a nursing capacity by Trinity Village Care Centre in Kitchener, at the Grand River Hospital Freeport Site Floor 3P in Kitchener, and at Cambridge Memorial Hospital 5th floor, Cambridge Ontario, save and except

Manager of the Cambridge and Freeport sites, the Assistant Director of Care and persons above the rank of Assistant Director of Care." (25 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

Applications for Certification Dismissed Without Vote

1192-11-R: Labourers' International Union of North America, Local 625 (Applicant) v. 1156707 Ontario Limited and, Marchand Excavating Contractors Ltd. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

2504-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Graham Bros. Construction Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener)

Unit: "All construction labourers in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Town of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Township of Esquesing, and the Towns of Ajax and Pickering in the Regional Municipality of Durham (Board Area 8) and the County of Simcoe and the District Municipality of Muskoka (Board Area 18) and The Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Township of Nassagaweya (Board Area 26), excluding the industrial, commercial and institutional sector of the construction industry, save and except non-working forepersons and persons above the rank of non-working forepersons. (75 employees in unit)

Number of names of persons on revised voters' list	114
Number of persons who cast ballots	78
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	39
Number of segregated ballots cast by persons whose names appear on voter's list	37
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	62
Number of ballots segregated and not counted	0

1728-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. York Region District School Board (Respondent) v. Canadian Union of Public Employees (Intervener)

Unit: "all employees employed as designated Early Childhood Educators (as defined by the Education Act) on a regular basis (not including Occasional designated Early Childhood Educators) in the Early Learning

Program at York Region District School Board in York Region, save and except supervisors and persons above the rank of supervisor and those persons already represented by a trade union" (68 employees in unit)

3979-11-R: Labourers' International Union of North America, Local 506 (Applicant) v. Advanced Precast Inc. (Respondent)

Unit: "All employees of the Responding Party in the Town of Caledon, Region of Peel, Ontario save and except supervisors, those above the rank of supervisor, office, clerical and sales staff." (38 employees in unit)

Number of names of persons on revised voters' list	40
Number of persons who cast ballots	43
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	20
Number of ballots segregated and not counted	6

4114-11-R: International Brotherhood of Electrical Workers, Local 115 (Applicant) v. Austin Marshall c.o.b. as iWire Electrical Systems (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice electricians, all journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communications installers in the employ of the responding party in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

0375-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. You-Go Rentals and Sales (Respondent)

Unit: "all of the employees of the Employer employed at and out of 9418 The Gore Road, in the City of Brampton save and except Supervisors, persons above the rank of Supervisor, sales, office and clerical staff" (4 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

1149-12-R: United Food & Commercial Workers, Local 206 (Applicant) v. Burt Transportation Services Ltd. (Respondent)

Unit: "all employees of Burt Transportation Services Ltd. employed as accessible transportation drivers, working out of the City of Vaughan (excluding 8811 Keele Street), save and except supervisors, persons above the rank of supervisor, dispatchers, office and administrative staff. Clarity note: The geographic scope does not include 8811 Keele Street, which is the subject of OLRB File No. 3007-11-R." (22 employees in unit)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

1197-12-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. T & T Supermarket Inc. (Respondent)

Unit: "all employees of T&T Supermarket Inc., employed at the Warehouse and Distribution Centre including Bakery, Kitchen, Warehouse and Drivers in the City of Toronto, save and except Supervisors, persons above the rank of Supervisor, Office, Department Heads and Sales Representatives." (91 employees in unit)

1199-12-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Takumi Stamping Canada Inc. (Respondent)

Unit: "all employees of Takumi Stamping Canada Inc. in the City of St. Thomas save and except Supervisors, those above the rank of Supervisor, Office, Clerical and Technical Personnel." (117 employees in unit)

Number of names of persons on revised voters' list	126
Number of persons who cast ballots	121
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	111
Number of segregated ballots cast by persons whose names appear on voter's list	3

Number of segregated ballots cast by persons whose names do not appear on voters' list	7
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	71
Number of ballots segregated and not counted	10

1203-12-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. GFL Environmental East Corporation (Respondent)

Unit: "all employees of Green For Life and/or GFL Environmental East Corporation in the City of Windsor save and except supervisors, persons above the rank of supervisor, Office and Sales Staff." (31 employees in unit)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	17
Number of ballots segregated and not counted	0

1248-12-R: Teamsters Local Union No. 91 (Applicant) v. Trenton Home Hardware Building Centre (Respondent)

Unit: "all yard associates, sales associates and cashiers of Trenton Home Hardware Building Centre working at 224 Front Street, Trenton Ontario, excluding students, office staff, foreman, supervisors, and persons above the rank of foreman or supervisor" (45 employees in unit)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	17
Number of ballots segregated and not counted	4

1267-12-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Mersen Canada Toronto Inc. (Respondent)

Unit: "all employees of Mersen Canada Toronto Inc., employed in the City of Mississauga, Ontario, save and except Supervisors and persons above the rank of Supervisor, Quality Control, Office, Clerical and Sales Representatives" (56 employees in unit)

Number of names of persons on revised voters' list	56
Number of persons who cast ballots	52
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	52
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	32
Number of ballots segregated and not counted	0

1336-12-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Kantar Operations (Respondent)

Unit: "all employees of Kantar Operations working in the City of Mississauga, the Town of Oakville, the City of Brampton, the Town of Milton, the Town of Newmarket, the City of Vaughan, the Town of Markham, the Town of Richmond Hill, the City of Pickering, the Town of Ajax and the Town of Whitby, save and except supervisors, persons above the rank of supervisor, office, clerical, sales staff and drivers, and any employee for whom a trade union held bargaining rights on the date of application" (8 employees in unit)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	2

1355-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Fraser Drill Blast Management Inc. (Respondent)

Unit: "all drillers and surface blasters in the employ of the responding party in the Province of Ontario, save and except supervisors and persons above the rank of supervisor." (8 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	9
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	3

Applications for Certification Withdrawn

2050-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. Avon Maitland District School Board (Respondent) v. Ontario Secondary School Teachers' Federation ("OSSTF/FEESO") (Intervener)

2090-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Brennan Paving & Construction Ltd. (Respondent)

2232-10-R: Elementary Teachers' Federation of Ontario (ETFO) (Applicant) v. Near North District School Board (Respondent) v. Ontario Secondary School Teachers' Federation ("OSSTF/FEESO") (Intervener)

0263-11-R: Ontario Council of Construction Unions (Applicant) v. Brookfield Homes (Ontario) Limited (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183, Labourers' International Union of North America, Local 1081 (Intervener)

3771-11-R: Canadian Construction Workers' Union (Applicant) v. Di Cenzo Construction Company Limited and/or Di Cenzo Homes (Respondent)

4062-11-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Patriot Electric Corp. (Respondent)

0001-12-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ron Lee Construction Inc. (Respondent)

0086-12-R: Sheet Metal Workers' International Association Local 30 (Applicant) v. Suz Mechanical Inc. (Respondent)

0472-12-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ron Lee Construction Inc. (Respondent)

0819-12-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Complex Services Inc. (Respondent) v. Ontario Public Service Employees Union (Intervener)

1017-12-R: Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters (Applicant) v. ML Ready Mix Concrete Inc. (Respondent)

1066-12-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. KSP Finishes Ltd. (Respondent)

1084-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. A-1 Asphalt Maintenance Ltd. and, L & M Haulage Inc. (Respondent)

1192-12-R: Construction Workers Local 52 affiliated with the Christian Labour Association of Canada (Applicant) v. Pedersen Construction Inc. (Respondent)

1637-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Unico Facility Services Canada Company (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

3507-03-R: Sheet Metal Workers' International Association Local 30 (Applicant) v. Ontario Roofing & General Contracting Services Ltd., Dupont Roofing & Sheet Metal Inc., Applewood Roofing & Sheet Metal Ltd. (Respondent) (*Granted*)

0666-09-R: UFCW Canada, Local 1993 (Applicant) v. Morris Brown & Sons Company Limited, and Provincial Fruit Company Limited, Responding Parties (Respondent) v. Teamsters Local Union No. 419 (Intervener) (*Dismissed*)

0665-10-R: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (Applicant) v. Taggart Group, Doran Contractors Limited (formerly Taggart General Contractors Limited), Taggart Construction Limited, Taggart Realty Management Inc., Tamarack Development Corporation, Doran Residential Contractors Ltd. (formerly Doran (East Market) Contractors Ltd.), 85 Plymouth Street Ltd., Trim Road Landholdings Ltd., 265 Carling Avenue Ltd. (Respondent) v. Christian Labour Association of Canada (Intervener) (*Withdrawn*)

3539-11-R: Canadian Union Of Public Employees (Applicant) v. Northeastern Catholic District School Board, Moosonee Roman Catholic Separate School Board, Ontario Public Service Employees Union (Respondent) (*Granted*)

3973-11-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. 1621940 Ontario Inc. c.o.b. as Branair DB, Branair Design Build Inc. (Respondent) (*Granted*)

4071-11-R: IBEW Electrical Power Council of Ontario and IBEW Construction Council of Ontario (Applicant) v. Andritz Hydro Installations Inc., Andritz Hydro Ltd., Andritz Hydro Canada Inc., Andritz Ltd., GETSCO Technical Services Inc., GE Hydro and, GE Canada Inc. (Respondent) (*Withdrawn*)

0429-12-R: International Union of Bricklayers and Allied Craftworkers, Local 7 (Applicant) v. Presto Construction Inc. and, 7115725 Canada Inc. carrying on business as Presto Construction (Respondent) (*Granted*)

0761-12-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Eldin Building Corporation, Eldin Homes Limited and, 2062601 Ontario Limited (Respondent) (*Granted*)

0956-12-R: International Union of Painters and Allied Trades Local 1891 (Applicant) v. Straun William Costie c.o.b. as CC Group Contracting, CC Group Contracting Inc. (Respondent) (*Granted*)

SALE OF A BUSINESS

3507-03-R: Sheet Metal Workers' International Association Local 30 (Applicant) v. Ontario Roofing & General Contracting Services Ltd., Dupont Roofing & Sheet Metal Inc., Applewood Roofing & Sheet Metal Ltd. (Respondent) (*Granted*)

0665-10-R: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (Applicant) v. Taggart Group, Doran Contractors Limited (formerly Taggart General Contractors Limited), Taggart Construction Limited, Taggart Realty Management Inc., Tamarack Development Corporation, Doran Residential Contractors Ltd. (formerly Doran (East Market) Contractors Ltd.), 85 Plymouth Street Ltd., Trim Road Landholdings Ltd., 265 Carling Avenue Ltd. (Respondent) v. Christian Labour Association of Canada (Intervener) (*Withdrawn*)

3539-11-R: Canadian Union Of Public Employees (Applicant) v. Northeastern Catholic District School Board, Moosonee Roman Catholic Separate School Board, Ontario Public Service Employees Union (Respondent) *(Granted)*

3973-11-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 (Applicant) v. 1621940 Ontario Inc. c.o.b. as Branair DB, Branair Design Build Inc. (Respondent) *(Granted)*

4071-11-R: IBEW Electrical Power Council of Ontario and IBEW Construction Council of Ontario (Applicant) v. Andritz Hydro Installations Inc., Andritz Hydro Ltd., Andritz Hydro Canada Inc., Andritz Ltd., GETSCO Technical Services Inc., GE Hydro and, GE Canada Inc. (Respondent) *(Withdrawn)*

0429-12-R: International Union of Bricklayers and Allied Craftworkers, Local 7 (Applicant) v. Presto Construction Inc. and, 7115725 Canada Inc. carrying on business as Presto Construction (Respondent) *(Granted)*

0761-12-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Eldin Building Corporation, Eldin Homes Limited and, 2062601 Ontario Limited (Respondent) *(Granted)*

0954-12-R: Public Service Alliance of Canada (Applicant) v. Hearst, Kapuskasing and Smooth Rock Falls Counselling Services and, The Corporation of the Town of Moosonee (Respondent) *(Granted)*

0956-12-R: International Union of Painters and Allied Trades Local 1891 (Applicant) v. Straun William Costie c.o.b. as CC Group Contracting, CC Group Contracting Inc. (Respondent) *(Granted)*

UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

3872-11-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Ontario Public Service Employees Union, Complex Services Inc. c.o.b. Casino Niagara (Respondent) *(Granted)*

Unit: "all Security Associates employed by Complex Services Inc. c.o.b. as Casino Niagara and Niagara Fallsview Casino Resort in the City of Niagara Falls, save and except Security Shift Supervisors and persons above the rank of Security Shift Supervisor." (216 employees in unit)

Number of names of persons on revised voters' list	206
Number of persons who cast ballots	171
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	171
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	169
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0365-07-R: Darren Cates (Applicant) v. The Carpenter's District Council of Ontario, United Brotherhood of Carpenter's and Joiners of America and its Local 494 (Respondent) v. Walls.Com Inc., 1690148 Ontario Inc. (Intervener) (*Withdrawn*)

1323-12-R: Maneshwar Ramgolam & a Group of Employees of Iron Mountain, Toronto (Applicant) v. United Steelworkers of America (Respondent) v. Iron Mountain Canada Corporation (Intervener) (*Dismissed*)

Unit: "all employees of Iron Mountain Canada Corporation, working in and out of the City of Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical, sales, marketing, and billing employees" (78 employees in unit)

Number of names of persons on revised voters' list	77
Number of persons who cast ballots	74
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	74
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	48
Number of ballots marked against respondent	25
Number of ballots segregated and not counted	0

1435-12-R: John Riley (Applicant) v. Service Employees Intl - Local 1 Unit 513A - Medex (Respondent) v. Extendicare (Canada) Inc. (Intervener) (*Dismissed*)

1534-12-R: Sales Reps Danone Inc. Mississauga (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent) v. Danone Inc. (Intervener) (*Terminated*)

1649-12-R: Brian Cox (Applicant) v. United Steelworkers (Respondent) v. Atlantic Industries Limited (Intervener) (*Granted*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

0358-12-U: United Food and Commercial Workers Canada, Local 175 (Applicant) v. Cancoil Thermal Corporation (Respondent) (*Terminated*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

1421-12-U: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, on its own behalf and on behalf of its Local Union Drywall Acoustic Lathing and Insulation, Local 675 (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183, and Joao Batista Alves, Cesar Rodrigues, Ricardo Puppini, Martin Battaglia, Joe Alfonsi, Jose Barbosa DeSousa, Jose Ferreira, John Cruz, Evaristo Paisana (Respondent) (*Terminated*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2694-09-U: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Eagle Plumbing Contractors Inc. (Respondent) (*Granted*)

0664-10-U: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (Applicant) v. Taggart Group, Doran Contractors Limited (formerly Taggart General Contractors Limited), Taggart Construction Limited, Taggart Realty Management Inc., Tamarack Development Corporation, Doran Residential Contractors Ltd. (formerly Doran (East Market) Contractors Ltd.), 85 Plymouth Street Ltd., Trim Road Landholdings Ltd., 265 Carling Avenue Ltd. (Respondent) v. Christian Labour Association of Canada (Intervener) (*Withdrawn*)

0928-10-U: Residential Framing Contractors' Association of Metropolitan Toronto and Vicinity Inc. (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Respondent) v. Toronto Residential Construction Labour Bureau (Intervener) (*Dismissed*)

1192-10-U: Mohammad Asif Bhatt, Shahid Qayyum, Khalid Qayyum Khalil, Haroon Wahid and Nazar Hayat Kharal (Applicant) v. Oakville United Taxi Ltd. (Respondent) (*Withdrawn*)

2870-10-U: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. Drain Land Inc. (Respondent) (*Withdrawn*)

3798-10-U: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Royal Plumbing and Contracting Ltd. (Respondent) (*Withdrawn*)

4070-10-U: Adam Wadon (Applicant) v. Elementary Teachers' Federation of Ontario/ Elementary Teachers of Toronto (Respondent) (*Dismissed*)

0592-11-U: Lisa Lindsay (Applicant) v. CAW, Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) (*Dismissed*)

0925-11-U: National Automobile, Aerospace, Transportation & General Workers Union of Canada ("Caw-Canada") and Its Local 385 (Applicant) v. Coca-Cola Refreshments Canada Company (Respondent) (*Withdrawn*)

1171-11-U: Gareth Fellows (Applicant) v. International Brotherhood of Electrical Workers, Local 353 (Respondent) v. Ainsworth Inc. (Intervener) (*Endorsed Settlement*)

2109-11-U: Anita M. Fox (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario, as represented by the Ministry of Attorney General (Intervener) (*Dismissed*)

2157-11-U: Labourers' International Union of North America, Local 506 (Applicant) v. Ulma Construction Systems Canada Inc., Joe Comeau, Stephane Schiavo (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervener) (*Terminated*)

2296-11-U: Gail Myles (Applicant) v. Alliance Employees Union (AEU) (Respondent) v. Union of National Employees (Intervener) (*Dismissed*)

2488-11-U: Joan McKeown (Applicant) v. Communications, Energy and Paperworkers Union of Canada Local 87-M Southern Ontario Newsmedia Guild (Respondent) v. Toronto Star Newspapers Limited (Intervener) (*Dismissed*)

3159-11-U: David Garland (Applicant) v. United SteelWorkers, Local 1-1000 (Respondent) v. Canusa-CPS, A Division of ShawCor Ltd. (Intervener) (*Dismissed*)

3427-11-U: Abukar Ali (Applicant) v. UNITE HERE Local 75 (Respondent) v. The Fairmont Royal York (Intervener) (*Dismissed*)

3578-11-U: Chad E. Dashnay (Applicant) v. Canadian Union of Public Employees and its Local 870 (Respondent) (*Dismissed*)

3678-11-U: Eyob Yemaneab (Applicant) v. CAW, Local 302 (Respondent) v. St. Mary's Hospital (Intervener) (*Withdrawn*)

3955-11-U: United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Loblaws Companies Limited., Loblaws Supermarkets Limited., National Grocers Co. Ltd., Westfair Foods Ltd. and, Towers Watson (Respondent) (*Terminated*)

0056-12-U: John Gasbarrino (Applicant) v. Communications, Energy and Paperworkers Union of Canada (Local 101) (Respondent) v. Abitibowater Inc. (Intervener) (*Dismissed*)

0111-12-U: Edith Dennis (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Cambridge Memorial Hospital (Intervener) (*Dismissed*)

0295-12-U: Communications, Energy and Paperworkers Union of Canada and its Local 333 (Applicant) v. HGC Management Inc. (Respondent) (*Withdrawn*)

0340-12-U: Althea Leslie (Applicant) v. Ontario Federation of Health Care Workers, LIUNA Local 1110 (Respondent) (*Dismissed*)

0359-12-U: United Food and Commercial Workers Canada, Local 175 (Applicant) v. Cancoil Thermal Corporation (Respondent) (*Terminated*)

0368-12-U: International Union of Operating Engineers, Local 793 (Applicant) v. Ron Lee Construction Inc. (Respondent) (*Withdrawn*)

0436-12-U: Velta Austin (Applicant) v. Canadian Union of Public Employees and its Local 3224 (Respondent) (*Withdrawn*)

0467-12-U: Brick and Allied Craft Union of Canada and Brick and Allied Craft Union of Canada, Local 5 (Applicant) v. 1690448 Ontario Ltd. o/a PS Masonry & Construction (Respondent) (*Withdrawn*)

0665-12-U: Matthew M. Duffy (Applicant) v. Ontario Public Service Employees' Union, Warren Thomas, Nick Mustari, Monte Vieselmeyer and Bob Eaton (Respondent) v. Ministry of Community Safety and Correctional Services (Intervener) (*Dismissed*)

0728-12-U: Nighat Masood (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) (*Dismissed*)

0785-12-U: The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183, Jack Oliveira., Chris McNeill, Benefit Plan Administrators and, Local 183 Members Training Fund and its Trustees (see Appendix "C") (Respondent) (*Withdrawn*)

0910-12-U: James A. Harrigan (Applicant) v. CAW-Canada Local 112 (Respondent) (*Withdrawn*)

0911-12-U: Liat Chanoch (Applicant) v. Association of Hebrew School Educators (Respondent) *(Withdrawn)*

0920-12-U: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Waterford Services Inc. (Respondent) *(Withdrawn)*

1018-12-U: Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters (Applicant) v. ML Ready Mix Concrete Inc. (Respondent) *(Withdrawn)*

1112-12-U: UNITE HERE Local 75 (Applicant) v. The Strathcona Hotel (Respondent) *(Withdrawn)*

1196-12-U: Brick and Allied Craft Union of Canada (on its own behalf and on behalf of its Affiliated Local Unions 1,2,4,5,10,12,20,23,28,29,31) (Applicant) v. Universal Workers Union Labourers' International Union of North America, Local 183 and, Limen Group Ltd. (Respondent) *(Withdrawn)*

1459-12-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Bas Contractors Inc. c.o.b. as Bas Fire Protection Services (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

2866-10-M: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. Drain Land Inc. (Respondent) *(Withdrawn)*

1284-12-M: Labourers' International Union of North America, Local 506 (Applicant) v. James Dick Construction Limited, James Dick Holdings Limited, Caledon Sand & Gravel Inc., Hamilton Ready Mix Ltd., Assinck Limited (Respondent) *(Dismissed)*

JURISDICTIONAL DISPUTES

1144-10-JD: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 663 (Applicant) v. Precision Concepts Group Inc. and, Millwrights Local 1592, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Mechanical Contractors Association of Ontario (MCAO), Association of Millwrighting Contractors of Ontario Inc. (Intervener) *(Dismissed)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

4099-06-M; 4100-06-M; 4101-06-M: The Crown in Right of Ontario (Applicant) v. The Professional Engineers and Architects of the Ontario Public Service (PEGO) (Respondent) *(Withdrawn)*

1071-11-M: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ainsworth Inc. (Respondent) *(Endorsed Settlement)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

3161-11-OH: David Garland (Applicant) v. Canusa-CPS, A Division of ShawCor Ltd. (Respondent) v. United SteelWorkers, Local 1-1000 (Intervener) *(Dismissed)*

3833-11-OH: Julianne C. Hall (Applicant) v. The City of Toronto-Employment and Social Services (Respondent) *(Terminated)*

3899-11-OH: Mohamed Thakib (Applicant) v. City of Toronto, Rowntree Childcare Centre (Respondent) *(Withdrawn)*

0200-12-OH: Yvonne Culp (Applicant) v. Blue Line Transportation Ltd. (Respondent) *(Dismissed)*

0595-12-OH: Peter Turner (Applicant) v. Stein Industries Inc. (Respondent) *(Withdrawn)*

0936-12-OH: Joseph Daniel Scott (Applicant) v. The Honest Lawyer Restaurant (Respondent) *(Withdrawn)*

0949-12-OH: Kyle Rayner (Applicant) v. Idlewyld Manor Corporation (Respondent) *(Withdrawn)*

0961-12-OH: Samuel Lane (Applicant) v. Your Courier Service (Respondent) *(Withdrawn)*

1010-12-OH: Patricia A. Bedford (Applicant) v. Canavac Systems Inc. (Respondent) *(Withdrawn)*

1015-12-OH: Marius Valentin Nicu (Applicant) v. Oak Leaf Confections (Respondent) *(Withdrawn)*

1023-12-OH: Zoe Harris (Applicant) v. College Pro Painters (Respondent) *(Withdrawn)*

1097-12-OH: Yolahaydee Hernandez (Applicant) v. Ripley's Niagara Water Park Resort LP o/a GREAT WOLF LODGE (Respondent) *(Withdrawn)*

1244-12-OH: Ottolina Sopoco (Applicant) v. Gallagher Auto Parts (Respondent) *(Withdrawn)*

1245-12-OH: Corey Morris (Applicant) v. CAP Products Ltd. (Respondent) *(Dismissed)*

1279-12-OH: Paul Bedford (Applicant) v. City of Stratford (Respondent) *(Withdrawn)*

1297-12-OH: Lori Sands (Applicant) v. BTE Assembly Ltd. (Respondent) *(Withdrawn)*

CONSTRUCTION INDUSTRY GRIEVANCES

1578-06-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Regulvar Inc./Regulvar Canada Inc. (Respondent) *(Withdrawn)*

0663-10-G: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (Applicant) v. Taggart Group, Doran Contractors Limited (formerly Taggart General Contractors Limited), Taggart Construction Limited, Taggart Realty Management Inc., Tamarack Development Corporation, Doran Residential Contractors Ltd. (formerly Doran (East Market) Contractors Ltd.), 85 Plymouth Street Ltd., Trim Road Landholdings Ltd., 265 Carling Avenue Ltd. (Respondent) *(Withdrawn)*

2878-10-G: IBEW Electrical Power Council of Ontario on behalf of its Affiliate International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Electrical Power Systems Construction Association ("EPSCA"), Bruce Power LP, Aecon Industrial, a Division of Aecon Construction Group Inc., Black & McDonald Limited, Comstock Canada Ltd., E.S. Fox Limited (Respondent) *(Dismissed)*

1493-11-G: Labourers' International Union of North America, Local 527 (Applicant) v. UCC Group Inc. (Respondent) *(Withdrawn)*

2698-11-G; 3145-11-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Networks Inc. (Respondent) *(Dismissed)*

3605-11-G: The Formwork Council of Ontario and Universal Workers Union, Labourers' International Union of North America Local 183, Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Forma-Con Construction (A Division of 1428508 Ontario Ltd.) (Respondent) *(Withdrawn)*

3664-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 527 (Applicant) v. 1621940 Ontario Inc. c.o.b. as Branair DB, Branair Design Build Inc. (Respondent) *(Granted)*

3745-11-G: The Carpenters District Council of Ontario, Local 18 (Applicant) v. TCI Titan Contracting Incorporated (Respondent) *(Granted)*

0065-12-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. IZIZ PROTILING (Respondent) *(Withdrawn)*

0101-12-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 1568278 Ontario Inc. o/a Basic Industries Glazing (Respondent) *(Terminated)*

0357-12-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Technicore Underground Inc. and/or, Technicore Underground Corp. and/or, Technicore Inc. (Respondent) *(Withdrawn)*

0502-12-G; 0795-12-G: The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Respondent); The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183, and, Local 183 Members Training Fund and its Trustees (see Appendix "C") (Respondent) v. Benefit Plan Administrators Limited and Chris McNeill (Intervener) *(Withdrawn)*

0602-12-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. C.F. Concrete & Drain Inc. (Respondent) *(Granted)*

0727-12-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Mike Betti, a sole proprietor c.o.b. as Metro Forming (Respondent) *(Granted)*

0783-12-G: International Union of Operating Engineers, Local 793 (Applicant) v. Terra-Land Construction Ltd. (Respondent) *(Granted)*

0937-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Westview Electric Contractors Inc. (Respondent) *(Granted)*

0943-12-G: Sheet Metal Workers International Association, Local 30 (Applicant) v. Bothwell-Accurate Co. (2006) Limited (Respondent) *(Withdrawn)*

0972-12-G: Sheet Metal Workers International Association, Local 537 (Applicant) v. Medcon Mechanical Ltd. (Respondent) *(Withdrawn)*

1093-12-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Chislett Asphalt Roofing Ltd. (Respondent) *(Withdrawn)*

1108-12-G: Labourers' International Union of North America, Local 625 (Applicant) v. Solid Concrete (Respondent) *(Granted)*

1187-12-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Coco Paving Inc. (Respondent) *(Withdrawn)*

1252-12-G: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Lorcon 2000 Contracting Ltd. (Respondent) *(Granted)*

1254-12-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Lake Excavating & Contracting Inc. (Respondent) *(Withdrawn)*

1259-12-G: Plumbers Residential Council, Ontario and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 (Applicant) v. Alamo Plumbing & Drain Specialists Inc. (Respondent) *(Withdrawn)*

1376-12-G: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. The Roberts Group Inc./Roberts Onsite Inc. (Respondent) *(Withdrawn)*

1391-12-G: Labourers' International Union of North America, Local 506 (Applicant) v. Long Valley Forming Limited (Respondent) *(Withdrawn)*

1404-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Watt Worx Electrical Corp. (Respondent) *(Endorsed Settlement)*

1433-12-G: The International Brotherhood of Painters and Allied Trades, Local Union 1590 (Applicant) v. Harkness-Waters (2005) Ltd. (Respondent) *(Granted)*

1438-12-G: Carpenters' District Council of Ontario, Local 18 (Applicant) v. Gala Store Fixtures Installations Inc. (Respondent) *(Granted)*

1445-12-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Belrock Construction Limited (Respondent) *(Granted)*

1449-12-G: Construction and Allied Workers Local Union 607 (Applicant) v. Kiewit - Alarie, A Partnership (Respondent) *(Withdrawn)*

1454-12-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 67 (Applicant) v. Bomben Plumbing & Heating Ltd. (Respondent) *(Terminated)*

1538-12-G: The International Union of Painters and Allied Trades Local 1891 (Applicant) v. 1382331 Ontario Inc. o/a Boudreau Construction (Respondent) *(Terminated)*

1542-12-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Okie Inc. (Respondent) *(Endorsed Settlement)*

1555-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Murray Electric Contractors Inc. (Respondent) *(Withdrawn)*

1556-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Merc Electrical Ltd. (Respondent) *(Granted)*

1567-12-G: Labourers' International Union of North America, Local 527 (Applicant) v. 1860004 Ontario Limited c.o.b. as Green Construction & Demo (Respondent) *(Granted)*

1589-12-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 6665268 Canada Inc. o/a Absolute Installations (Respondent) (*Granted*)

APPEALS - EMPLOYMENT STANDARDS ACT

2720-08-ES: Huong Luu (Applicant) v. Brookfield Properties Corporation and, Director of Employment Standards (Respondent) (*Withdrawn*)

3376-10-ES: 15428425 Ontario Limited Operating as Moe's Pizza (Applicant) v. Mark Sterling, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0242-11-ES: L'Alliance des femmes de la francophonie canadienne (Applicant) v. Nicole Pepin and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0607-11-ES: Darcella Floral and Design Inc. o/a The Flower Nook (Applicant) v. Ms. Amy M. Boyadjian, Director of Employment Standards (Respondent) (*Granted*)

0893-11-ES: Sleep Clinic London Inc. operating as London Sleep Clinic (Applicant) v. Ateeq Mirza and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1388-11-ES: William Horrocks (Applicant) v. 734046 Ontario Limited o/a Tecumseh Home Hardware Building Centre and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1718-11-ES: Organix Matters Inc. (Applicant) v. Director of Employment Standards (Respondent) (*Dismissed*)

1859-11-ES: Trivest Developments Corporation (Applicant) v. Linda Murphy and, Director of Employment Standards (Respondent) (*Dismissed*)

1879-11-ES; 2023-11-ES: Market Dimensions Inc. operating as Toronto Insights (Applicant) v. Director of Employment Standards (Respondent) (*Withdrawn*)

1888-11-ES: Ikrar Mughal (Applicant) v. 2138894 Ontario Inc. o/a Metro Protective Services and, Director of Employment Standards (Respondent) (*Withdrawn*)

1909-11-ES: Julie Nicholls (Applicant) v. Alexander MacKenzie Forrest o/a Northern Gradall, Director of Employment Standards (Respondent) (*Dismissed*)

2035-11-ES: North Bay Chrysler Ltd. o/a North Bay Chrysler (Applicant) v. Shawn C. Norman and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2107-11-ES: 1495761 Ontario Inc. operating as Windsor Chrysler (Applicant) v. Wojciech Nieradka and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2134-11-ES: George Stein Limited (Applicant) v. Blair Neuman and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2145-11-ES: 1789341 Ontario Inc. operating as Applejack's (Applicant) v. Sage Brancatti and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2204-11-ES: Sandra Watson (Applicant) v. Kenneth Radnoff, Harry Gregoropoulos, Norman Slover, Norman Swedko, David Dwoskin and Ronald Stein o/a Radnoff Pearl LLP and, Director of Employment Standards (Respondent) (*Granted*)

2256-11-ES: Gordon Winter (Applicant) v. The PIC Group Ltd. and, Director of Employment Standards (Respondent) (*Dismissed*)

2433-11-ES: James McLellan (Applicant) v. Sunpark Hidden Valley Estates Inc., Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2789-11-ES: The Corporation of the Town of Goderich, The Corporation of the Township of Huron-Kinloss, The Corporation of the Township of Ashfield-Colborne-Wawanosh, The Corporation of the Municipality of Central Huron, The Corporation of the Municipality of Bluewater and the Corporation of the Municipality of Huron East operating as Mid Huron Landfill Site (Applicant) v. Susan Fehr and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2841-11-ES: Plas Tech Extrusions Ltd. (Applicant) v. Matthew Rose and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2939-11-ES: Zbigniew Szymanski (Applicant) v. Excel Direct Inc. and, Director of Employment Standards (Respondent) (*Terminated*)

2980-11-ES: Mazen Fadel (Applicant) v. Limen Group Ltd., and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3025-11-ES: Michael David William Fritz (Applicant) v. John Patrick Corrigan o/s Four Corners Restaurant, Director of Employment Standards (Respondent) (*Dismissed*)

3034-11-ES: Canadian Aesthetic Academy Inc. (Applicant) v. Delia Olea Jimenez and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3040-11-ES: Jacqueline R. Telfer (Applicant) v. San Holding Corp. and, Director of Employment Standards (Respondent) (*Terminated*)

3067-11-ES: Idlewood Contracting Inc. (Applicant) v. Carrie Bickford and, Director of Employment Standards (Respondent) (*Terminated*)

3096-11-ES: Lifetime Security Tech Inc. (Applicant) v. Li Yu, Director of Employment Standards (Respondent) (*Dismissed*)

3222-11-ES: Hairworks of Baden Inc. operating as Hairworks Baden Inc. (Applicant) v. Rachael Schuett and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3253-11-ES: Yan (Helen) Huang (Applicant) v. 2135396 Ontario Inc. o/a JRAD Mechanical Inc. and JRAD Mechanical Ltd., Director of Employment Standards (Respondent) (*Withdrawn*)

3294-11-ES: 1496348 Ontario Inc. o/a The Honest Lawyer (Applicant) v. Omar Daoud and Director of Employment Standards (Respondent) (*Withdrawn*)

3406-11-ES: 1704853 Ontario Inc./Classic Disposal (Applicant) v. William Osterloo and Director of Employment Standards (Respondent) (*Dismissed*)

3408-11-ES: Pamela Ellis (Applicant) v. 2072097 Ontario Inc. o/a Howard Johnson Inn and, Director of Employment Standards (Respondent) (*Granted*)

3466-11-ES: Adrenalinfitness.com Ltd. Calidonna Fitness Group Ltd. (Applicant) v. Diana Curic, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

- 3687-11-ES:** Automated Interiors Inc. (Applicant) v. Steve Homen and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 3774-11-ES:** KSM Property Management Inc. (Applicant) v. Bibi Haniff and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 3982-11-ES:** Rose-Marie Gauthier (Applicant) v. Unionville Foodland, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 4107-11-ES:** Clive H. Preddie, Director of Shooters Sports Bar Inc. (Applicant) v. Samantha Bridglal, and Director of Employment Standards (Respondent) (*Terminated*)
- 0206-12-ES:** Ernest Curtis (Applicant) v. Lady Marmalade Restaurant East Inc. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0226-12-ES:** Hamilton Discount Auto Parts and Supplies Inc. operating as Brampton Discount Auto Parts (Applicant) v. Paul Ravenhill and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0332-12-ES:** James Packard Mechanical-Electrical Inc. (Applicant) v. Brian Duck, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0382-12-ES:** 1057906 Ontario Inc. o/a Sears Indoor Clean Air (Applicant) v. Valerie Healey and, Director of Employment Standards (Respondent) (*Terminated*)
- 0404-12-ES:** Leonel Conde (Applicant) v. James Kurt Schiller and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0437-12-ES:** Robert Clarke (Applicant) v. Netintegrity Inc., Director of Employment Standards (Respondent) (*Dismissed*)
- 0529-12-ES:** Avalanche Contracting Inc. (Applicant) v. Jorge M. Machado and, Director of Employment Standards (Respondent) (*Terminated*)
- 0543-12-ES:** Shannon M Purdy and Nicole D Allen operating as Under The Moon (Applicant) v. Hillary Mollard, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0565-12-ES:** Rancon Construction Ltd (Applicant) v. Suzana Failing, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0566-12-ES:** Rancon Construction Ltd (Applicant) v. Marco Furman, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0576-12-ES:** Jeff Grant (Applicant) v. Manurep Sales Inc. and, Director of Employment Standards (Respondent) (*Terminated*)
- 0659-12-ES:** Bill Metcalfe (Applicant) v. Todd Henderson, Director of Employment Standards (Respondent) (*Terminated*)
- 0677-12-ES:** Robert C. Nearing Holdings Inc. o/a Canadian Tire Store #083 (Applicant) v. James Grasley and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)
- 0703-12-ES:** Colin Michael Mullen (Applicant) v. Thornhill Golf & Country Club, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0737-12-ES: Alexandr Druc operating as Valex Demolition Unlimited (Applicant) v. Andriy Mykhalov and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0742-12-ES: Basics Office Products Ltd. (Applicant) v. Jennifer Stanciu, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0774-12-ES: Colalillo Automotive Services Limited (Applicant) v. Vincent Reina and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0823-12-ES: James Waring (Applicant) v. 1512081 Ontario Limited o/a Abrams Towing Services Ltd., and Director of Employment Standards (Respondent) (*Terminated*)

0867-12-ES: Lee-Anne Lay (Applicant) v. 1142316 Ontario Inc. o/a Inter-Link Services, Indis Inc. o/a Muir's Cartage, Counsel to the Director of Employment Standards (Respondent) (*Withdrawn*)

0898-12-ES: Hudson's Bay Company (Applicant) v. Irene Kubaj, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0903-12-ES: Erin Dodge Chrysler Ltd. (Applicant) v. Lutfi (Leon) Mustapha and, Director of Employment Standards (Respondent) (*Dismissed*)

0982-12-ES: Ilda Santos (Applicant) v. Great Lakes Fish Corporation, Director of Employment Standards (Respondent) (*Dismissed*)

1150-12-ES: Inkas Security Services Ltd. (Applicant) v. Muzinga Mafutamingi and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1333-12-ES: Linda Villeneuve (Applicant) v. Pioneer Manor, Director of Employment Standards (Respondent) (*Dismissed*)

1380-12-ES: Nadia E. Green (Applicant) v. Staples Business Depot and, Director of Employment Standards (Respondent) (*Terminated*)

1473-12-ES: Omni Facility Services Canada Limited (Applicant) v. Director of Employment Standards (Respondent) (*Withdrawn*)

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

3091-11-HS: General Motors of Canada Limited (Applicant) v. Joseph Ah-Hone, Inspector, CAW, Local 222 (Respondent) (*Withdrawn*)

1172-12-HS: Dollarama L.P. (Applicant) v. Pam Rudow and, Kevin DeNeve, Inspector (Respondent) (*Withdrawn*)

1186-12-HS: Dollarama L.P. (Applicant) v. Pam Rudow and, Kevin DeNeve, Inspector (Respondent) (*Granted*)

1215-12-HS: Northern Uniform (Applicant) v. A Director under the Occupational Health and Safety Act (Respondent) (*Dismissed*)

1221-12-HS: Aecon Group Inc. (Applicant) v. A Director under the Occupational Health and Safety Act (Respondent) (*Withdrawn*)

1272-12-HS: Steam Whistle Brewing (Applicant) v. A Director under the Occupational Health and Safety Act (Respondent) (*Dismissed*)

1338-12-HS: Scholastic Book Fairs Canada Inc. (Applicant) v. Felipe Aguilar and, A Director under the Occupational Health and Safety Act (Respondent) (*Dismissed*)

FIRST AGREEMENT - DIRECTION

3229-09-FC: Labourers' International Union of North America, Local 625 (Applicant) v. Delway Contractors Ltd. (Respondent) (*Withdrawn*)

3627-09-FC: Labourers' International Union of North America, Local 625 (Applicant) v. J. Savone & Sons Concrete (Respondent) (*Withdrawn*)

REFERRAL FROM MINISTER (SECTION 115)

3439-10-M: Amica at Bayview (Applicant) v. Canadian Union of Public Employees, Local 4844 (Respondent) (*Terminated*)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1295-10-ES: Azar Trading/Neo-Paws International (Applicant) v. Daniella Castellan and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3810-10-ES: Ranpreet Singh Randhawa (Applicant) v. 1421326 Ontario Inc. o/a Carmelita Flaim and Director of Employment Standards (Respondent) (*Terminated*)

0955-11-R: Public Service Alliance of Canada (Applicant) v. Defense Contract Management Agency Americas (Canada) (Respondent) (*Granted*)

1475-11-U: Durval Terceira, Jamie Melo, Michael O'Brien, Gaetano Strazzanti and Cesar Daniel Averó (Applicant) v. Labourers International Union of North America and, Universal Workers Union - Labourers' International Union of North America Local 183 (Respondent) v. Ronald A. Pink, Q.C. (Intervener) (*Dismissed*)

1752-11-ES: Aditya Birla Minacs Worldwide Inc. (Applicant) v. Rebecca Bedore and, Director of Employment Standards (Respondent) (*Granted*)

1812-11-ES: Tracks & Wheels Equipment Brokers Inc. (Applicant) v. Craig Craftchick and, Director of Employment Standards (Respondent) (*Dismissed*)

3202-11-ES: Mirko Krajac (Applicant) v. 1297651 Ontario Inc. o/a Bozzo Specialty Foods, Director Of Employment Standards (Respondent) (*Dismissed*)

3833-11-OH: Julianne C. Hall (Applicant) v. The City of Toronto-Employment and Social Services (Respondent) (*Terminated*)

3895-11-ES: Naveed Butt (Applicant) v. 2069588 Ontario Inc. Help Unlimited, 1383016 Ontario Inc. and Director of Employment Standards (Respondent) (*Terminated*)

4040-11-U: Norman Traversy (Applicant) v. Mississauga Professional Fire Fighters Association, Local 1212 (Respondent) (*Dismissed*)

0160-12-U: Francesco Di Nunzio (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (C.A.W.), Local Union 89 (Respondent) v. Amherst Quarries (1969) Ltd., (Intervener) (*Dismissed*)

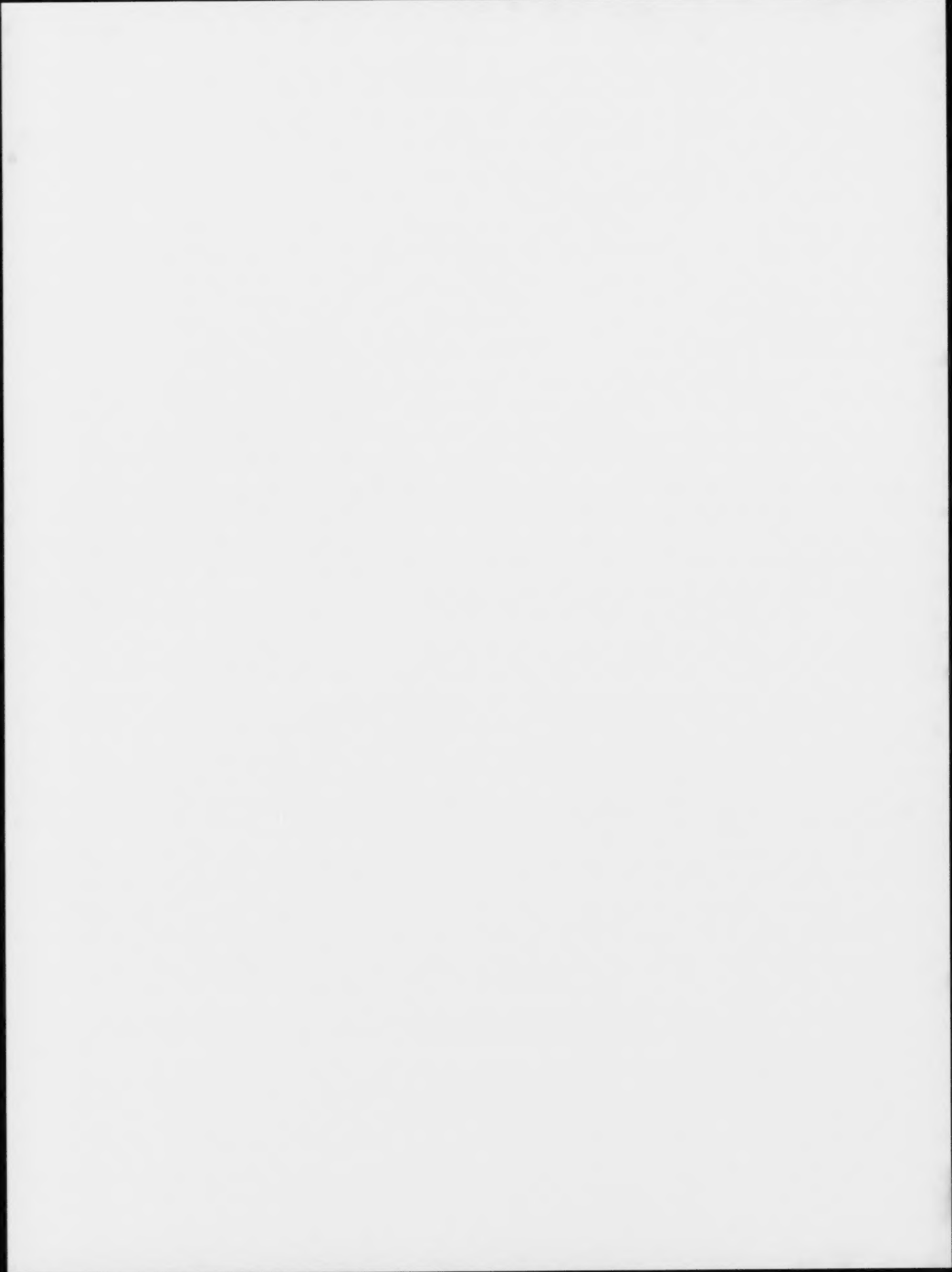
0356-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Vito Tarantino Ltd. (Respondent) (*Dismissed*)

0567-12-ES: Fame Weekly Inc. (Applicant) v. Meng Meng Qi and, Director of Employment Standards (Respondent) (*Dismissed*)

0756-12-ES: 1449119 Ontario Inc. o/a Joshua Creek Variety (Applicant) v. Rina Estafanos, and Director of Employment Standards (Respondent) (*Dismissed*)

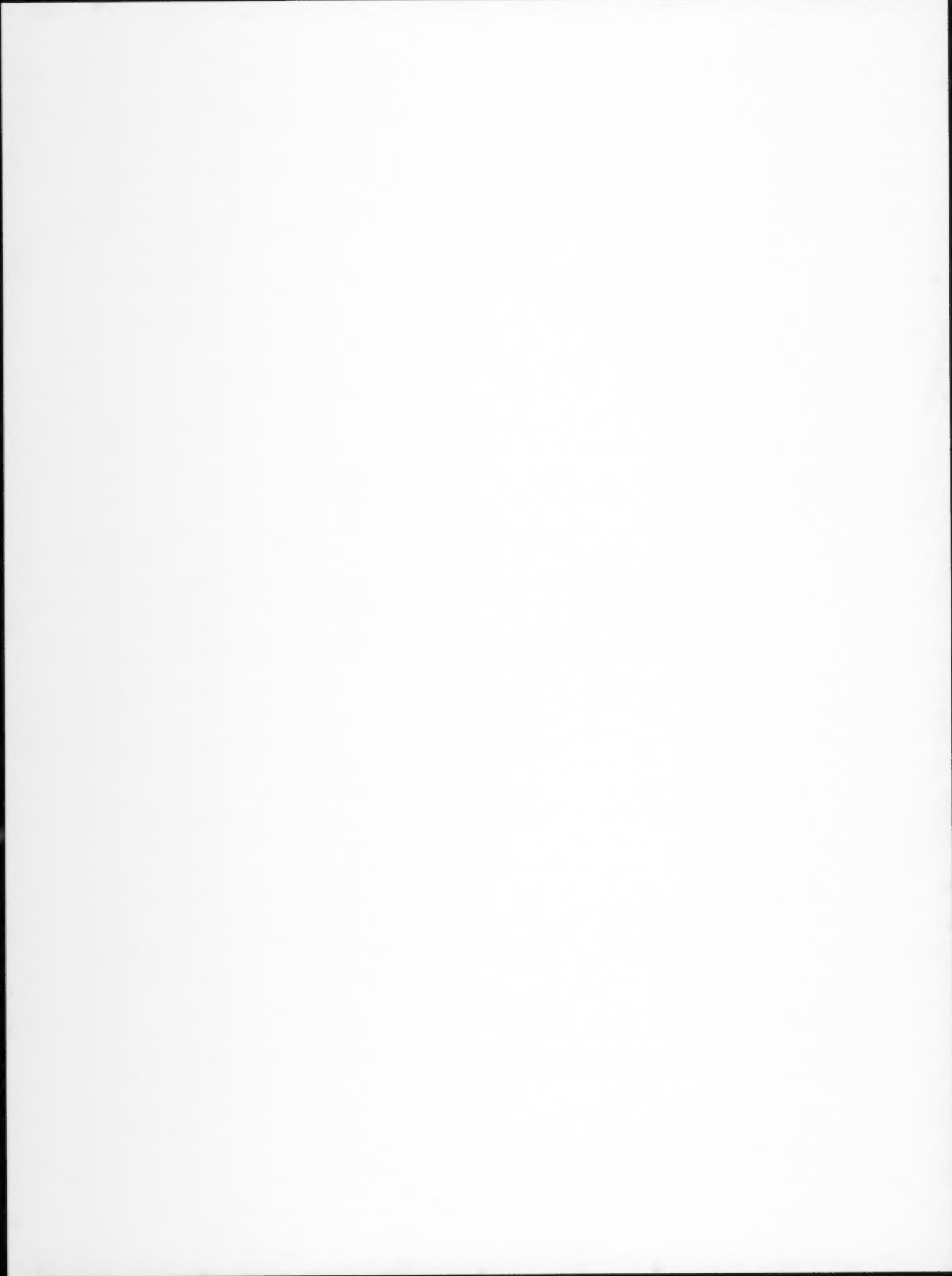
0800-12-ES: Janice Gordon (Applicant) v. Lelia Octave and Director of Employment Standards (Respondent) (*Terminated*)

1435-12-R: John Riley (Applicant) v. Service Employees Intl - Local 1 Unit 513A - Medex (Respondent) v. Extendicare (Canada) Inc. (Intervener) (*Dismissed*)



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING SEPTEMBER 2012

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

0224-11-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Royal Tek Wall Systems Ltd. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Royal Tek Wall Systems Ltd. in the industrial, commercial and institutional sector of the construction industry and all painters and painters' apprentices in the employ of Royal Tek Wall Systems Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non working foremen and persons above the rank of non working foreman. *Clarity note:* the Board declares that drywall tapers are included in the bargaining unit." (2 employees in unit) (*Clarity*)

0176-12-R: International Union of Operating Engineers, Local 793 (Applicant) v. Dominion Paving of Niagara Inc. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Dominion Paving of Niagara Inc. in the industrial, commercial and institutional sector of the construction industry and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Dominion Paving of Niagara Inc. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1184-12-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1382331 Ontario Inc. o/a Boudreau Construction (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 1382331 Ontario Inc. o/a Boudreau Construction in the industrial, commercial and institutional sector of the construction industry and all carpenters and carpenters' apprentices in the employ of 1382331 Ontario Inc. o/a Boudreau Construction in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

1360-12-R: Labourers' International Union of North America, Local 1059 (Applicant) v. All Season Concrete (Respondent)

Unit: "all construction labourers in the employ of All Season Concrete in the industrial, commercial and institutional sector of the construction industry and all construction labourers in the employ of All Season Concrete in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex,

Bruce, and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (9 employees in unit)

1444-12-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. SWM Contracting Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of SWM Contracting Inc., in the industrial, commercial and institutional sector of the construction industry and all carpenters and carpenters' apprentices in the employ of SWM Contracting Inc. in all sectors of the construction industry within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1543-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Universal Structural Restorations Ltd. USRL Ltd. (Respondent)

Unit: "all construction labourers in the employ of Universal Structural Restorations Ltd. And USRL Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (40 employees in unit)

1553-12-R: International Union of Elevator Constructors, Local 50 (Applicant) v. Davies Elevator Corporation (Respondent)

Unit: "all elevator constructors and elevator constructors' apprentices in the employ of Davies Elevator Corporation in the industrial, commercial and institutional sector of the construction industry and all elevator constructors and elevator constructors' apprentices in the employ of Davies Elevator Corporation in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (16 employees in unit)

1654-12-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 9090-5092 Québec Inc. c.o.b. as Coffrages Saulnier (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 9090-5092 Québec Inc. c.o.b. as Coffrages Saulnier in the industrial, commercial and institutional sector of the construction industry and all carpenters and carpenters' apprentices in the employ of 9090-5092 Québec Inc. c.o.b. as Coffrages Saulnier in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (18 employees in unit)

1656-12-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Sheridan Seating Inc. and/or, Sheridan Gymnasium Equipment Limited (Respondent)

Unit: "all ironworkers and ironworkers' apprentices in the employ of Sheridan Seating Inc. and Sheridan Gymnasium Equipment Limited in the industrial, commercial and institutional sector of the construction industry and all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional

Municipality of Durham excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1658-12-R: Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Branthaven Homes 2000, Inc. (Respondent)

Unit: "all construction labourers in the employ of Branthaven Homes 2000, Inc., in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township) and the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

1687-12-R: Labourers' International Union of North America, Local 527 (Applicant) v. Corington Engineering Inc. (Respondent)

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of Corington Engineering Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non working foremen and persons above the rank of non working foreman." (15 employees in unit)

1690-12-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 71 (Applicant) v. Housing Services Inc. c.o.b. HSI Solutions (Respondent)

Unit: "all plumbers and plumbers' apprentices and pipefitters and pipefitters' apprentices in the employ of Housing Services Inc. c.o.b. HIS Solutions in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1705-12-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. VM Services Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of VM Services Inc. in the industrial, commercial and institutional sector of the construction industry and all painters and painters' apprentices in the employ of VM Services Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1711-12-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Norjohn Contracting and Paving Ltd. (Respondent)

Unit: "all construction labourers in the employ of Norjohn Contracting and Paving Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1712-12-R: Labourers' International Union of North America Local 183 (Applicant) v. Jarlian Construction Inc. (Respondent)

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of Jarlian Construction Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and

York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1718-12-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 6514928 Canada Inc. o/a Sylitec and/or o/a Sylitec Construction (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 6514928 Canada Inc. o/a Sylitec and/or o/a Sylitec Construction in the industrial, commercial and institutional sector of the construction industry and all carpenters and carpenters' apprentices in the employ of 6514928 Canada Inc. o/a Sylitec and/or o/a Sylitec Construction in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1719-12-R: International Union of Operating Engineers, Local 793 (Applicant) v. A. Van Egmond Construction (2005) Ltd. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers, and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of A. Van Egmond Construction (2005) Ltd. in the industrial, commercial and institutional sector of the construction industry and all employees engaged in the operation of cranes, shovels, bulldozers, and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of A. Van Egmond Construction (2005) Ltd. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working forepersons and persons above the rank of non working foreperson" (2 employees in unit)

1724-12-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Columbus Aluminum and Roofing Ltd. (Respondent)

Unit: "all sheet metal workers, sheet metal workers' apprentices, sheeters, sheeters' assistants and material handlers in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working forepersons and persons above the rank of non-working foreperson" (2 employees in unit)

1738-12-R: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (Applicant) v. CDMCA Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of CDMCA Ltd. in the industrial, commercial and institutional sector of the construction industry and all carpenters and carpenters' apprentices in the employ of CDMCA Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1758-12-R: Construction Workers Local 52 affiliated with the Christian Labour Association of Canada (Applicant) v. Wallwin Electric Services Limited (Respondent)

Unit: "all journeyman and apprentice electricians in the employ of Wallwin Electric Services Limited in all sectors of the construction industry in County of Simcoe and the District Municipality of Muskoka and the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, save and except non-working foremen and persons above the rank of non working foreman" (31 employees in unit)

1774-12-R: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rob James Lindsay c.o.b. as PRINCE-CON (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Rob James Lindsay c.o.b. as PRINCE-CON in the industrial, commercial and institutional sector of the construction industry and all carpenters and carpenters' apprentices in the employ of Rob James Lindsay c.o.b. as PRINCE-CON in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

1820-12-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. DH General Contracting Incorporated (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of DH General Contracting Incorporated in the industrial, commercial and institutional sector of the construction industry and all carpenters and carpenters' apprentices in the employ of DH General Contracting Incorporated in all sectors of the construction industry in the County of Renfrew, the City of Ottawa and the United Counties of Prescott and Russell and the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non working foreman" (10 employees in unit)

1871-12-R: Labourers' International Union of North America Local 183 (Applicant) v. Distinct Design Trim (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Distinct Design Trim in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1874-12-R: Construction Workers Local 52 affiliated with the Christian Labour Association of Canada (Applicant) v. Beckett Electrical Inc. (Respondent)

Unit: "all journeymen electricians and apprentice electricians in the employ of Beckett Electric Inc. in all sectors of the construction industry in the County of Wellington; the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, save and except non-working foremen and persons above the rank of non-working foreman" (20 employees in unit)

Bargaining Agents Certified Subsequent to Vote

2293-11-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. European Quality Meats & Sausages (Respondent)

Unit: "all employees of the European Quality Meats & Sausages employed at 16 Jutland Road, Toronto, Ontario, save and except Supervisors, persons above the rank of Supervisor, office, clerical and outside sales staff" (53 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	51
Number of persons who cast ballots	50
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	42
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	7
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	7

1014-12-R: UNITE HERE Local 75 (Applicant) v. The Strathcona Hotel (Respondent)

Unit: "all employees of 1310866 Ontario Limited c.o.b. as The Strathcona Hotel located at 60 York Street in the City of Toronto, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than twenty-four (24) hours per week, students employed during school vacation periods, maintenance employees, and employees of the Tavern who are already represented by UNITE HERE Local 75" (43 employees in unit)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1359-12-R: Service Employees International Union Local 1 Canada (Applicant) v. 913096 Ontario Ltd. o/a Nipissing Manor Long Nursing Center (Respondent)

Unit: "all employees of 913096 Ontario Limited o/a Nipissing Manor Nursing Center in the Town of Corbeil, including Unit Clerks, save and except supervisors, persons above the rank of supervisor and all other office and clerical, registered and graduate nurses." (125 employees in unit)

Number of names of persons on revised voters' list	140
Number of persons who cast ballots	123
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	105
Number of segregated ballots cast by persons whose names appear on voter's list	18

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	69
Number of ballots marked against applicant	35
Number of ballots segregated and not counted	18

1385-12-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Cynergy Mechanical Ltd. (Respondent)

Unit: "all journeyman and apprentice refrigeration and air-conditioning mechanics and maintenance mechanics employed by Cynergy Mechanical Ltd. performing maintenance and/or service work in the Province of Ontario save and except persons above the rank of working foreperson" (19 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

1410-12-R: U.F.C.W. Local 333 (Applicant) v. ASG Security Group Ltd. (Respondent)

Unit #1: "all employees of ASG Security Group Ltd. employed in the City of Toronto save and except supervisors, persons above the rank of supervisor and sales and office staff" (240 employees in unit) *(Having regard to the agreement of the parties)*

Unit #2: "all employees of ASG Security Group Ltd. employed in the Regional Municipality of York save and except supervisors, persons above the rank of supervisor and sales and office staff" (240 employees in unit) *(Having regard to the agreement of the parties)*

Unit #3: "all employees of ASG Security Group Ltd. employed in the Regional Municipality of Peel save and except supervisors, persons above the rank of supervisor and sales and office staff" (240 employees in unit) *(Having regard to the agreement of the parties)*

1505-12-R: Ontario Public Service Employees Union (Applicant) v. Canadian Mental Health Association, Thunder Bay Branch (Respondent)

Unit: "all employees of Canadian Mental Health Association, Thunder Bay Branch, employed in the City of Thunder Bay, save and except Directors, Managers, the IT Coordinator, Quality Assurance Coordinator, Supervisors and persons above the rank of Supervisor, Senior Bookkeeper, Accounting Clerk/Statistician, Administrative/ Human Resources Assistant, Executive Assistant, Administrative Assistants to the First Place Program, client-employees, and students." (80 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	50
Number of persons who cast ballots	48

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	46
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	20
Number of ballots segregated and not counted	2

1507-12-R: Ontario Nurses' Association (Applicant) v. St. Gabriel's Villa of Sudbury (Respondent)

Unit: "all registered nurses and registered nurses with a temporary certificate of registration engaged in a nursing capacity at St. Gabriel's Villa of Sudbury, save and except Director of Care and those above the rank of Director of Care" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1510-12-R: Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. Olympic Floor Cleaning Inc. (Respondent)

Unit: "all employees of Olympic Floor Cleaning Inc. engaged in cleaning and maintenance at 401 and 405 The West Mall in the City of Toronto, save and except office and clerical employees, sales representatives, supervisors and those above the rank of supervisor" (21 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1523-12-R: Ontario Nurses' Association (Applicant) v. Espanola and Area Family Health Team (Respondent)

Unit: "all employees of the Espanola and Area Family Health Team working in Espanola, Ontario, save and except Managers and those above the rank of Manager" (14 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

1558-12-R: Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Applicant) v. The Promenade Seniors' Suites and Retirement Residence (Respondent)

Unit: "all employees employed by the responding party at The Promenade Seniors Suites and Retirement Residence, in the City of Ottawa, save and except the Supervisors and those above the rank of Supervisor" (50 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	20
Number of ballots segregated and not counted	0

1562-12-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647, affiliated with the International Brotherhood of Teamsters (Applicant) v. Canada Bread Company Limited (Respondent) v. Bakery, Confectionery, Tobacco Workers and Grain Millers International Union Local 264 (Intervener)

Unit: "all employees of Canada Bread Company Limited at the plant located at 745 Nebo Road, Hamilton, Ontario, save and except supervisors, persons above the rank of supervisor, clerical, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period" (230 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	283
Number of persons who cast ballots	229
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	184
Number of segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names do not appear on voters' list	13
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	74
Number of ballots marked in favour of intervener	10
Number of ballots segregated and not counted	45

1563-12-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) (Applicant) v. Star One Motors Inc. o/a Mercedes-Benz Durham (Respondent)

Unit: "all employees of Star One Motors Inc. o/a Mercedes-Benz Durham in Whitby Ontario save and except supervisors, persons above the rank of supervisors, office, clerical and sales staff, and students" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	5

1596-12-R: Canadian Union of Public Employees (Applicant) v. Municipality of Whitestone (Respondent)

Unit: "all employees employed by the Municipality of Whitestone in the Municipality of Whitestone, save and except supervisors and persons above the rank of supervisor, fire chief, deputy fire chief, Firefighters, Volunteer Firefighters, Chief Building Official, Treasurer/Deputy Clerk, library employees, office and clerical staff and students employed during the school vacation period" (12 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	4

1609-12-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647, affiliated with the International Brotherhood of Teamsters (Applicant) v. Canada Bread Company, Limited (Respondent) v. Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 264 (Intervener)

Unit: "all production, maintenance, sanitation and shipping employees located at the company's plant at 155 Nebo Road, Hamilton, Ontario, save and except supervisors, and those persons above the rank of supervisor, all office, clerical, and retail store staff, technical staff, salespersons, trucking and delivery staff" (95 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	89
Number of persons who cast ballots	64
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	63
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	63
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	1

1613-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Compass Canada Support Services Ltd. (Respondent)

Unit: "all employees of Compass Canada Support Services Ltd. at 1625 Tech Avenue in the City of Mississauga, engaged in cleaning and maintenance, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (12 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear ⁴ on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1641-12-R: Service Employees International Union Local 2 Brewery, General & Professional Workers' Union (Applicant) v. Asbury Building Services Inc. (Respondent)

Unit: "all employees of Asbury Building Services Inc. working at 185, 191, 195 The West Mall in the City of Toronto, save and except supervisors and persons above the rank of supervisor" (23 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	3

1713-12-R: Ontario Public Service Employees Union (Applicant) v. Perram House (Respondent)

Unit: "all employees of Perram House in the City of Toronto save and except managers and those above the rank of manager" (28 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25

Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

1716-12-R: Canadian Union of Public Employees (Applicant) v. The Township of Ramara (Respondent)

Unit: "all employees employed by the Corporation of the Township of Ramara in the County of Simcoe save and except supervisors and persons above the rank of supervisor, office and clerical employees and water and waste water employees and pending the resolution of the status of these categories, excluding as well forepersons." (14 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

1748-12-R: Labourers' International Union of North America, Local 183 (Applicant) v. Downing Street Property Management Inc. (Respondent)

1869-12-R: The Canadian Union of Labour Employees (Applicant) v. The Public Service Alliance of Canada (Respondent)

Applications for Certification Dismissed Subsequent to Vote

2804-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. BECC Construction Group Ltd. (Respondent)

Unit: "All carpenters and carpenters' apprentices employed by the responding party in the Industrial, Commercial and Institutional sector of the Construction Industry in the Province of Ontario save and except non-working foremen and persons above the rank of non-working foreman and all carpenters and carpenters' apprentices employed by the responding parties in all sectors of the Construction Industry in Ontario Labour Relations Board Area Number 8, excluding the Industrial Commercial and Institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

1608-12-R: Canadian Union of Public Employees (Applicant) v. The City of Ottawa (Respondent)

Unit: "employees of the City of Ottawa, in the City of Ottawa, who primarily support the Aquatics Programs for the summer session between the period of April 1st to September 7th, save and except persons hired for special recurring or non-recurring events (e.g. Winterlude), volunteers, members of the other bargaining units at the City of Ottawa and any other persons excluded under the provisions of the Ontario Labour Relations Act" (800 employees in unit)

1645-12-R: Ontario Pipe Trades Council and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 663 (Applicant) v. Keddco Mfg. (2011) Ltd (Respondent)

Unit: "All employees of Keddco Manufacturing Ltd. and/or Keddco Mfg. (2011) Ltd. in the city of Sarnia, Ontario save and except supervisors and those above the rank of supervisor, office, clerical and sales staff and students employed during the summer months" (32 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	2

1720-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. DBi Services LLC (Respondent)

Unit: "all employees of the responding party engaged in highway maintenance pursuant to Ontario Ministry of Transportation contracts who work at and out of the Districts of Sudbury and Manitoulin, in the District of Algoma at and out of Elliott Lake, and in the District of Parry Sound at and out of Britt, save and except mechanics and welders, construction materials truck drivers, students employed during the school vacation period (one per yard), supervisors and persons above the rank of supervisor, office, clerical and sales staff" (32 employees in unit)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	30
Number of ballots segregated and not counted	2

Applications for Certification Withdrawn

1025-03-R: United Food and Commercial Workers International Union (Applicant) v. Kingsville Rol-Land Farms (Respondent) v. Attorney General of Ontario (Intervener)

3759-10-R: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Mady Development Corporation and/or Mady Contract Division Ltd. (Respondent)

0639-12-R: Labourers' International Union of North America, Local 506 (Applicant) v. James Dick Construction Limited, James Dick Holdings Limited, Caledon Sand & Gravel Inc., Hamilton Ready Mix Ltd., Assinck Limited (Respondent)

0966-12-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Ledcor CMI Limited (Respondent) v. Construction Workers Local 52 affiliated with the Christina Labour Association of Canada (Intervener)

1388-12-R: Labourers' International Union of North America Ontario Provincial District Council (Applicant) v. Monster Contracting Inc. (Respondent)

1786-12-R: Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Catalia Development Group Inc. (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervener)

1802-12-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Leamington United Mennonite Home and Apartments (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

2506-07-R: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Bonavista Sheet Metal Ltd., A.P. Mechanical Inc., Gennady Trosman c.o.b. as A.P. Sheet Metal and Mechanical Ventilation, A.P. Sheet Metal and Mechanical Ventilation Ltd., G.D. Sheet Metal Corp. (Respondent) *(Granted)*

2085-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ni-Co Drain & Concrete Ltd., Radoslaw Maciejewski c.o.b. as Form-All Contracting, and, View Construction Inc. (Respondent) *(Granted)*

1691-11-R: United Food & Commercial Workers Canada, Local 175 (Applicant) v. Midtown Meats Ltd., Canadian Blast Freezers Ltd. (Respondent) *(Withdrawn)*

1796-11-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters & Joiners of America, Local 1946 (Applicant) v. Hi-Tek Dev. Inc.; and, Home Sweet Home Maintenance Services Inc. (Respondent) *(Withdrawn)*

3535-11-R: Canadian Union of Public Employees (Applicant) v. Huron-Superior Catholic District School Board The Hornepayne Roman Catholic Separate School Board, United Steelworkers Local 1-2010 (Respondent) *(Granted)*

3893-11-R: Carpenters District Council, United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Bur-Met Contracting Ltd., Bur-Met Northern Ltd., CWS Construction Ltd., Overall Plastering Ltd., Woodcrest Construction Limited (Respondent) *(Terminated)*

0822-12-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Industrial Refrigerated Systems Inc., 1701805 Ontario Inc. o/a Recom Compressor (Respondent) *(Endorsed Settlement)*

SALE OF A BUSINESS

2342-06-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1105945 Ontario Limited c.o.b. as System Drywall & Acoustics and, SN Enterprise (Respondent) (*Withdrawn*)

2506-07-R: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Bonavista Sheet Metal Ltd., A.P. Mechanical Inc., Gennady Trosman c.o.b. as A.P. Sheet Metal and Mechanical Ventilation, A.P. Sheet Metal and Mechanical Ventilation Ltd., G.D. Sheet Metal Corp. (Respondent) (*Granted*)

2085-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ni-Co Drain & Concrete Ltd., Radoslaw Maciejewski c.o.b. as Form-All Contracting, and, View Construction Inc. (Respondent) (*Granted*)

1691-11-R: United Food & Commercial Workers Canada, Local 175 (Applicant) v. Midtown Meats Ltd., Canadian Blast Freezers Ltd. (Respondent) (*Withdrawn*)

1796-11-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters & Joiners of America, Local 1946 (Applicant) v. Hi-Tek Dev. Inc.; and, Home Sweet Home Maintenance Services Inc. (Respondent) (*Withdrawn*)

3535-11-R: Canadian Union of Public Employees (Applicant) v. Huron-Superior Catholic District School Board The Hornepayne Roman Catholic Separate School Board, United Steelworkers Local 1-2010 (Respondent) (*Granted*)

3893-11-R: Carpenters District Council, United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Bur-Met Contracting Ltd., Bur-Met Northern Ltd., CWS Construction Ltd., Overall Plastering Ltd., Woodcrest Construction Limited (Respondent) (*Terminated*)

0822-12-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Industrial Refrigerated Systems Inc., 1701805 Ontario Inc. o/a Recom Compressor (Respondent) (*Endorsed Settlement*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

2564-04-R: Universal Workers Union, LIUNA Local 183 (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Eastern Construction Company Limited (Respondent) (*Terminated*)

4037-11-R: Michael Robinson (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. Rexdale Mobile Truck Wash Inc. (Intervener) (*Granted*)

Unit: "The company recognizes the union as the sole and exclusive bargaining agent for all of its employees at Rexdale Mobile Truck Wash (1981) Inc. in the Municipality of Metropolitan Toronto and the City of Oshawa, save and except forepersons, persons above the rank of foreperson, dispatchers, office and sales staff." (9 employees in unit)

0508-12-R: Joanne Knudsen (Applicant) v. Service Employees International Local 1 Canada (Respondent) v. Bayshore Home Health, Thunder Bay (Intervener) (*Granted*)

Unit: "the Employer recognizes the Union as the sole and exclusive bargaining agent for all employees of Bayshore, in the City of Thunder Bay and District, save and except supervisors, persons above the rank of supervisor, office and clerical staff, and on-call coordinators" (216 employees in unit)

Number of names of persons on revised voters' list	176
Number of persons who cast ballots	82
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	82
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	38
Number of ballots marked against respondent	42
Number of ballots segregated and not counted	0

1544-12-R: Mr. Ricardo Rosa (Applicant) v. Sheet Metal Workers' International Association Local Union No. 285 (Respondent) v. Spinnaker Industries Inc. (Intervener) (*Granted*)

Unit: "all employees of Spinnaker Industries Inc. working in Toronto, Ontario, save and except forepersons and persons above the rank of forepersons, office, sales and clerical staff." (52 employees in unit)

Number of names of persons on revised voters' list	48
Number of persons who cast ballots	45
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	40
Number of ballots segregated and not counted	0

1598-12-R: A Group of Employees of Erin Park Toyota Lexus Including Terrance Dookie, Paul Machado, Steve Weame, Hung Tran (Applicant) v. CAW Canada and its local 252 (Respondent) v. Erin Park Automotive Limited, o/a Erin Park Lexus Toyota (Intervener) (*Granted*)

Unit: "all employees of Erin Park Automotive Limited o/a Erin Park Lexus Toyota in the City of Mississauga, save and except shop foreman, persons above the rank of shop foreman, commission sales staff, tower operators, office and clerical staff" (56 employees in unit)

Number of names of persons on revised voters' list	91
Number of persons who cast ballots	87
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	78
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	30
Number of ballots marked against respondent	48
Number of ballots segregated and not counted	9

1735-12-R: Ashley Wisking (Applicant) v. Service Employees Int'l. Local 1 Unit 513A Medex (Respondent) v. Extendicare Medex operated by Extendicare (Canada) Inc. (Intervener) (*Dismissed*)

1845-12-R: Linda Dosen (Applicant) v. SEIU Local 1 Canada (Respondent) (*Dismissed*)

1878-12-R: Elaine Berman (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Granted*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

1734-12-U: The Crown in Right of Ontario as represented by The Ministry of Community Safety and Correctional Services (Applicant) v. Ontario Public Service Employees Union and, Ontario Public Service Employees Union, Local 248 and, Stephen W. Smith and, Jason Hoyer (Respondent) (*Withdrawn*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2997-04-U: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Universal Workers Union, L.I.U.N.A. Local 183, Eastern Construction Company Limited (Respondent) (*Terminated*)

2915-08-U: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. BECC Construction Group Ltd. (Respondent) (*Withdrawn*)

0359-09-U: UNITE HERE (Applicant) v. Novotel Canada Inc. Accor Canada Inc. and Novotel Mississauga o/a Hotel Novotel Toronto Mississauga Centre (Respondent) (*Granted*)

2861-09-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steel Workers), Local 9511 (Applicant) v. Serco Des Inc. (Respondent) (*Withdrawn*)

2376-10-U: John Cirillo (Applicant) v. Durval Terceira, Daniel Averro, Jamie Melo, Gaetano Strazzanti and Micheal O'Brien (Respondent) (*Withdrawn*)

0647-11-U: Marius Nedelcu (Applicant) v. United Steelworkers of America, Local 9042 (Respondent) v. Brampton Brick Limited (Intervener) (*Dismissed*)

2226-11-U: Elementary Teachers' Federation of Ontario (Applicant) v. Waterloo Regional District School Board (Respondent) (*Terminated*)

3196-11-U; 3580-11-U: Communications, Energy and Paperworkers Union of Canada, Local 87-M Southern Ontario Newsmedia Guild (Applicant) v. Ming Pao Newspapers (Canada) Ltd. (Respondent) (*Terminated*)

3305-11-U: Judit Szekely (Applicant) v. Service Employees International Union, Local 1 Canada (Respondent) v. Revera Retirement LP carrying on business as Donway Place Retirement Residence (Intervener) (*Withdrawn*)

3631-11-U; 3632-11-U: Maria Balogh (Applicant) v. Service Employees International Union, Local 1 Canada (Respondent) v. Humber River Regional Hospital, Ontario Workers' Union (Intervener); Rhada Singh (Applicant) v. Service Employees International Union, Local 1 Canada (Respondent) v. Humber River Regional Hospital, Ontario Workers' Union (Intervener) (*Dismissed*)

3814-11-U: Brian G. Moorcroft (Applicant) v. Ontario Public Service Employees Union and (Respondent) (*Dismissed*)

4006-11-U: Ingrid Harper (Applicant) v. Health Care and Service Workers Union, Local 304 affiliated with the Christian Labour Association of Canada (Respondent) *(Dismissed)*

0157-12-U: International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. TESC Contracting Company Ltd. and, AMEC (Respondent) *(Withdrawn)*

0245-12-U: Labourers International Union of North America, Local 183 (Applicant) v. Drain -Tite Industries Drain -Tite Industries Inc. (Respondent) *(Withdrawn)*

0249-12-U: International Union of Operating Engineers, Local 793 (Applicant) v. Dominion Paving of Niagara Inc. (Respondent) *(Withdrawn)*

0648-12-U: D. Ian Sollitt (Applicant) v. CUPE 997 (Respondent) v. Trillium Lakelands District School (Intervener) *(Dismissed)*

0666-12-U: Ontario Public Service Employees Union (Applicant) v. Humber River Regional Hospital (Respondent) *(Withdrawn)*

0676-12-U: Joshua Bertini (Applicant) v. CUPE National Local 1280 (Respondent) v. Toronto Catholic District School Board (Intervener) *(Dismissed)*

0710-12-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. A & B Rail Services Ltd. (Respondent) *(Withdrawn)*

0743-12-U: Service Employees International Union, Local 1 Canada (Applicant) v. Bayshore Home Health (Respondent) *(Withdrawn)*

0779-12-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Kleenway Building Maintenance Services Inc. (Respondent) *(Withdrawn)*

0810-12-U: Ontario Workers' Union (Applicant) v. St. Michael's Hospital (Respondent) *(Withdrawn)*

0836-12-U: George Kamel Eskaros (Applicant) v. Canadian Union of Postal Workers (Respondent) v. Bee Clean Building Maintenance (Intervener) *(Dismissed)*

0837-12-U: Canadian Linen and Uniform Service Co. (Applicant) v. Teamsters Local Union 847 (Affiliated with the International Brotherhood of Teamsters and Teamsters Canada) (Respondent) *(Withdrawn)*

1179-12-U: Healthcare, Office and Professional Employees Union, Local 2220, UBCJA and Kenisha Bryan (Applicant) v. 1367178 Ontario Inc. carrying on the businesses known as The Chartwell Seniors Housing REIT Long Term Residences, The Westmount, The Woodhaven, The Wynfield, and The Waterford (Respondent) *(Withdrawn)*

1181-12-U: Labourers' International Union of North America, Local 506 (Applicant) v. Advanced Precast Inc. (Respondent) *(Withdrawn)*

1227-12-U: Milt Ronnenberg (Applicant) v. International Association Of Machinists And Aerospace Workers Local 386 (Respondent) v. Hobarts Food Equipment Group (Intervener) *(Withdrawn)*

1231-12-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Ledcor CMI Limited:, Construction Workers Local 52 affiliated with the Christina Labour Association of Canada; and, Louise Labine (Respondent) *(Withdrawn)*

1282-12-U: Communications, Energy and Paperworkers Union of Canada, Local 87-M Southern Ontario Newsmedia Guild (Applicant) v. Metroland Media Group Ltd. (Respondent) *(Withdrawn)*

1325-12-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Service Experts Heating & Air Conditioning Inc. o/a Francis Home Environment, Service Experts Heating & Air Conditioning Inc. o/a Federal Service Experts and Service Experts Heating & Air Conditioning Inc. o/a Dearie Contracting (Respondent) *(Withdrawn)*

1476-12-U: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1382331 Ontario Inc. o/a Boudreau Construction (Respondent) *(Withdrawn)*

1517-12-U: Ontario Public Service Employees Union (Applicant) v. Hotel Dieu Hospital and, Canadian Union of Public Employees, Local 1974 (Respondent) *(Withdrawn)*

1545-12-U: United Food and Commercial Workers International Union, Local 333 (Applicant) v. ASG Security Group Ltd. (Respondent) *(Withdrawn)*

1552-12-U: International Union of Elevator Constructors, Local 50 (Applicant) v. Davies Elevator Corporation (Respondent) *(Withdrawn)*

1577-12-U; 1581-12-U: The Canadian Union of Postal Workers (with Donovan Davis) (Applicant) v. ATS Retail Solutions (Respondent); The Canadian Union of Postal Workers (with Lloyd Scott) (Applicant) v. ATS Retail Solutions (Respondent) *(Withdrawn)*

1584-12-U: Mr. Ian Ekiert (Applicant) v. Cargill Limited - Guelph (Respondent) *(Terminated)*

1636-12-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647, affiliated with the International Brotherhood of Teamsters (Applicant) v. Canada Bread Company Limited (Respondent) *(Withdrawn)*

1662-12-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Universal Structural Restoration Ltd. / USRL Ltd. (Respondent) *(Withdrawn)*

1668-12-U: Ontario English Catholic Teachers' Association (Applicant) v. Northeastern Catholic District School Board (Respondent) *(Withdrawn)*

1682-12-U: International Brotherhood of Electrical Workers, Local 1687 (Applicant) v. AMEC and, BLAIS Industries (Respondent) *(Withdrawn)*

1692-12-U: Teamsters Local Union No. 230 (Applicant) v. Four Valleys Excavating & Grading Limited (Respondent) *(Withdrawn)*

1829-12-U: A Group of Employees of Erin Park Toyota Lexus Including Terrance Dookie, Paul Machado, Steve Wearne, Hung Tran (Applicant) v. CAW Canada and its local 252 (Respondent) v. Erin Park Automotive Limited, o/a Erin Park Lexus Toyota (Intervener) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

1625-12-M: Labourers' International Union of North America, Local 183 (Applicant) v. BDC Bull Dozer Construction Ltd. and, Maximum Construction Services (Respondent) *(Granted)*

1691-12-M: Teamsters Local Union No. 230 (Applicant) v. Four Valleys Excavating & Grading Limited (Respondent) *(Withdrawn)*

1763-12-M: Labourers' International Union of North America Local 183 (Applicant) v. DNM Lock-Block Ltd. (Respondent) *(Withdrawn)*

1809-12-M: Service Employees International Union, Local 1 Canada (Applicant) v. Bob Rumball Home for the Deaf (Respondent) *(Withdrawn)*

JURISDICTIONAL DISPUTES

0046-12-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Aecon Industrial, A Division of Aecon Construction Group Inc., The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Respondent) *(Withdrawn)*

1082-12-JD: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Phoenix Restoration Inc./Phoenix Gunitex Services Ltd., Carpenters District Council of Ontario, Brick and Allied Craft Union of Canada, Local 2 (Respondent) *(Withdrawn)*

1102-12-JD: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, on its own behalf and on behalf of its Local Union, Carpenters and Allied Workers, Local 27 (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183, Aspen Ridge Homes Ltd., Professional Carpentry Ltd. and, Dole Contracting Inc. (Respondent) *(Withdrawn)*

1136-12-JD: International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Phoenix Restoration Inc., Carpenters' District Council of Ontario, Brick and Allied Craft Union of Canada, Local 2 (Respondent) v. Masonry Industry Employers' Council of Ontario / Ontario Masonry Contractors' Association - BACU Bargaining Committee (Intervener) *(Withdrawn)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

2264-10-OH; 2781-10-OH: Marianne Amodeo (Applicant) v. Craiglee Nursing Home Limited, Deloitte & Touche Inc. and, Extendicare (Canada) Inc. (Respondent) *(Dismissed)*

0244-12-OH: D. Ian Sollitt (Applicant) v. Trillium Lakelands District School Board (Respondent) v. Canadian Union of Public Employees (Intervener) *(Dismissed)*

0671-12-OH: Julius Toltesi (Applicant) v. Cornwall Tire (Respondent) *(Endorsed Settlement)*

1030-12-OH: Nicholas Kusch (Applicant) v. Ideal Rubber Industries (Respondent) *(Withdrawn)*

1117-12-OH: Janet Wright (Applicant) v. Nimigon Retirement Home (Respondent) *(Withdrawn)*

1182-12-OH: Dylan Rabbetts (Applicant) v. A-1 Shipping Supplies (Respondent) *(Withdrawn)*

1185-12-OH: Gilbert Gurun (Applicant) v. Cargill Meat Solutions (Respondent) *(Withdrawn)*

1238-12-OH: Jose Soares (Applicant) v. 1565986 Ontario Inc. o/a Viana Drains and Water Services (Respondent) *(Withdrawn)*

1317-12-OH: Thomas Burke (Applicant) v. Kevin David, Nathan Tasse and Five Guys Burgers and Fries (Respondent) *(Dismissed)*

- 1344-12-OH:** Joseph Landry (Applicant) v. Chudleigh's Limited (Respondent) *(Terminated)*
- 1358-12-OH:** Candice Serson (Applicant) v. Meadowlands Pub & Eatery (Respondent) *(Withdrawn)*
- 1366-12-OH:** Michelle Starratt (Applicant) v. Joe Murray (Respondent) *(Withdrawn)*
- 1417-12-OH:** Kenneth Messer (Applicant) v. TGI Fridays (1526816 Ontario Ltd.) (Respondent) *(Withdrawn)*
- 1600-12-OH:** Allyn Miller (Applicant) v. Can-Stor Self Storage (Respondent) *(Withdrawn)*
- 1744-12-OH:** Andrew Scheib (Applicant) v. Old Oak Properties Inc. (Respondent) *(Withdrawn)*
- 1765-12-OH:** George Desgroseilliers (Applicant) v. DNM Lock-Block Ltd./DNM Systems Inc. (Respondent) *(Dismissed)*

CONSTRUCTION INDUSTRY GRIEVANCES

- 3100-06-G:** International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Weinmann Electric Limited (Respondent) *(Dismissed)*
- 0512-10-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Centennial Construction and Contracting (Niagara) Inc. (Respondent) *(Terminated)*
- 1167-10-G:** The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Asbescan Environmental Group Inc. (Respondent) *(Terminated)*
- 3765-11-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Aecon Group Inc. (Respondent) *(Withdrawn)*
- 4003-11-G:** International Brotherhood of Electrical Workers, Local 1687 (Applicant) v. Johnson Controls Ltd. (Respondent) *(Granted)*
- 0103-12-G:** International Union of Elevator Constructors, Local 90 (Applicant) v. Otis Canada Inc. (Respondent) *(Granted)*
- 0311-12-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. C & M Electric Ltd. (Respondent) *(Dismissed)*
- 0464-12-G:** Masonry Industry Employers' Council of Ontario / Ontario Masonry Contractors' Association - BACU Bargaining Committee (Applicant) v. Pirmac Masonry Inc. (Respondent) *(Granted)*
- 0505-12-G:** Sheet Metal Workers International Association, Local Union No. 285 (Applicant) v. ABComfort Corporation, ABComfort Home Services Inc., A1 Duct Express and HVAC Delivery Inc. c.o.b. Duct Express (Respondent) *(Granted)*
- 0838-12-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. 1701805 Ontario Inc. o/a Recom Compressor (Respondent) *(Endorsed Settlement)*
- 0892-12-G:** International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Phoenix Restoration Inc. (Respondent) v. Brick and Allied Craft Union of Canada, Local 2, Masonry Industry Employers' Council of Ontario / Ontario Masonry Contractors' Association - BACU Bargaining Committee, Carpenters' District Council of Ontario (Intervener) *(Withdrawn)*

1296-12-G: Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Associations of the United States and Canada Local Union 598 (Applicant) v. Paclaw Building Restoration Inc. (Respondent) *(Granted)*

1384-12-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Floorwall Forming Ltd. and, Floorwall Construction Ltd. (Respondent) *(Granted)*

1564-12-G: International Union of Elevator Constructors, Local 50 (Applicant) v. KONE, Inc. (Respondent) *(Withdrawn)*

1571-12-G: Sheet Metal Workers' International Association, Local 47 (Applicant) v. Dilfo Mechanical Limited (Respondent) *(Withdrawn)*

1583-12-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Dods Electric Ltd. (Respondent) *(Granted)*

1610-12-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. ABCO One Corporation (Respondent) *(Endorsed Settlement)*

1619-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Tech 3 Inc. (Respondent) *(Withdrawn)*

1623-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Kevin Dickie Electric Inc. (Respondent) *(Withdrawn)*

1628-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. E.M.C.S. Controls Inc. (Respondent) *(Withdrawn)*

1629-12-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. M.W.M. Mechanical Contractor Inc. (Respondent) *(Granted)*

1630-12-G: The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 463 (Applicant) v. Goodfellow & Dougherty Limited (Respondent) *(Withdrawn)*

1671-12-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Francton Construction Ltd. (Respondent) *(Terminated)*

1694-12-G: The Carpenters' District Council of Ontario, Local 494 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bondfield Construction Company Limited (Respondent) *(Withdrawn)*

1714-12-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Mack Mechanical Solutions Inc. (Respondent) *(Granted)*

1717-12-G: Brick and Allied Craft Union of Canada Local 2 (Applicant) v. FMBOT Contracting Limited (Respondent) *(Dismissed)*

1749-12-G: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Ozz Electric Inc. (Respondent) *(Withdrawn)*

1860-12-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 975997 Ontario Limited o/a J. Glass & Glazing (Respondent) *(Granted)*

APPLICATIONS FOR ACCREDITATION

3137-11-R: The Utility Contractors' Association of Ontario Incorporated (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) *(Withdrawn)*

APPEALS - EMPLOYMENT STANDARDS ACT

0752-07-ES: Kenricia Properties Inc. (Applicant) v. James Weldon, Director of Employment Standards (Respondent) *(Dismissed)*

2325-07-ES: Cornerstone Restaurant & Billiards (Applicant) v. Meaghan Cook and, Director of Employment Standards (Respondent) *(Dismissed)*

2894-09-ES: Antonio Fornieri (Applicant) v. 1395142 Ontario Inc. o/a Navan Feed Mill Restaurant and, Director of Employment Standards (Respondent) *(Withdrawn)*

3168-10-ES: Meredith Martel (Applicant) v. Royal Canadian Legion Branch 179, and Director of Employment Standards (Respondent) *(Withdrawn)*

3896-10-ES: Steel-Craft Door Products Ltd. (Applicant) v. Mike DeSousa and, Director of Employment Standards (Respondent) *(Withdrawn)*

0408-11-ES: David S. Pratt (Applicant) v. SunMaster Produce Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0463-11-ES: Michel Desnoyer (Applicant) v. Lalande Plumbing Plomberie Inc., and Director of Employment Standards (Respondent) *(Terminated)*

0478-11-ES: Rein Minnema, a Director of Minnema Farms Ltd. (Applicant) v. Thomas Lewis and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0849-11-ES: Mario Manfredi (Applicant) v. Envoy Business Services Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

1898-11-ES: Cheryl Anne Yurkowski (Applicant) v. Buck-A-Roo Dollar & Gift Store and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1907-11-ES: Stanley P. Vetere (Applicant) v. Reliable Waste Management and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2089-11-ES: Anthony Foderaro, Antonio Foderaro and Giovanni Foderaro as Directors of Peninsula Import Auto Parts Ltd. (Applicant) v. Paul Varona (Respondent) *(Granted)*

2449-11-ES: Maplehurst Farms Limited o/a Maplehurst Farms (Applicant) v. Kevin Sayeau and, Director of Employment Standards (Respondent) *(Granted)*

2496-11-ES: Mary Yvonne Faucher (Applicant) v. 1078845 Ontario Inc. o/a Ramada Inn Cornwall and, Director of Employment Standards (Respondent) *(Granted)*

2530-11-ES: Supreme General Services Inc. (Applicant) v. Colin Shearing and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2548-11-ES: Kosco Flooring Inc. (Applicant) v. Vicki Rushby, and Director of Employment Standards (Respondent) *(Dismissed)*

2704-11-ES: Bethina Holdings Ltd. (Applicant) v. Linda Allemano and, Director of Employment Standards (Respondent) *(Withdrawn)*

2829-11-ES: MD Mujibur Rahman (Applicant) v. Rocco Restaurant & Bar Inc. o/a Rocco Restaurant and Bar, Director of Employment Standards (Respondent) *(Dismissed)*

2859-11-ES: 0833188 BC Ltd. operating as Wheel- 1 (Applicant) v. Shawn Petrie and, Director of Employment Standards (Respondent) *(Dismissed)*

2897-11-ES: Heat In a Click Canada Ltd. (Applicant) v. Bruce Kurta and, Director of Employment Standards (Respondent) *(Granted)*

2981-11-ES: Primary Response Inc. (Applicant) v. Lois Searle, Director of Employment Standards (Respondent) *(Terminated)*

3014-11-ES: Evgeniya Soloveva (Applicant) v. Industry Hairdressing Inc. o/a Industry Hairdressing & Beauty, Director of Employment Standards (Respondent) *(Dismissed)*

3112-11-ES: Lee Merricks (Applicant) v. M&R Sports Group Ltd. o/a Image Force Soccer Schools and, Director of Employment Standards (Respondent) *(Withdrawn)*

3166-11-ES: Benson Group Inc. (Applicant) v. Richard Dupuis, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3207-11-ES: The Dollco Corporation (Applicant) v. Steve Frobel and, Director of Employment Standards (Respondent) *(Granted)*

3411-11-ES: Yong Sheng Lin (Applicant) v. Kamazu Fashion Inc./Modes Kamazu Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3412-11-ES: Xiu Jin Lin (Applicant) v. Kamazu Fashion Inc./Modes Kamazu Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3557-11-ES: Akbar Nikain (Applicant) v. Nadlan Property Management Inc. Nadlan-Harris Management and, Director of Employment Standards (Respondent) *(Dismissed)*

3568-11-ES: Wellesley Gomes (Applicant) v. 1696799 Ontario Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

3590-11-ES: Tomas Nassab (Applicant) v. 6701141 Canada Ltd. operating as Pizza Hut, and Director of Employment Standards (Respondent) *(Dismissed)*

3599-11-ES: Angela Burton (Applicant) v. Victor Culotta and, Director of Employment Standards (Respondent) *(Dismissed)*

3705-11-ES: EZ Street Cambridge (Applicant) v. Grant Miller and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3706-11-ES: EZ Street Cambridge (Applicant) v. Andrew Cowie and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3730-11-ES: I.Net Printing & Web Services Inc. (Applicant) v. Ahdifa Haidari and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3744-11-ES: Top Performance Maintenance & Cleaning Ltd. o/a Top Quality Exterior Design (Applicant) v. Claude Morin and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3764-11-ES: Ali Daneshvar a Director of Globest Immigration Inc. (Applicant) v. Roosta Zeinab, Director of Employment Standards (Respondent) (*Granted*)

3841-11-ES: Ajit Singh (Applicant) v. Can Art Aluminum Extrusion Inc. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3867-11-ES: Feren Signs & Awnings Ltd. (Applicant) v. Kevin Cudney and, Director of Employment Standards (Respondent) (*Dismissed*)

3870-11-ES: 1773987 Ontario Inc. o/a Dolce Social Ballroom (Applicant) v. Bianka Kamber and, Director of Employment Standards (Respondent) (*Dismissed*)

3894-11-ES: Walter H. Gibson, a director of Gibson Environmental Ltd. (Applicant) v. Lindsay Leigh Buckley and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3976-11-ES: 875527 Ontario Ltd. operating as Looseletters.ca (Applicant) v. Bouavone Ounsamone and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3977-11-ES: 875527 Ontario Ltd. operating as Looseletters.ca (Applicant) v. Kelly Girouard and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

4087-11-ES: John L. Hagen (Applicant) v. Drexler Construction Limited and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

4106-11-ES: M.Y. Home Corporation (Applicant) v. Douglas Hogan and, Director of Employment Standards (Respondent) (*Dismissed*)

0138-12-ES; 0139-12-ES: Raymond Alexander Carrion o/a PJC Poultry Services (Applicant) v. Director of Employment Standards (Respondent); Ruperto Alejandro Carrion Blancas aka Alex Carrion o/a M.A.R.C. Poultry Vaccination Services Ltd. (Applicant) v. Director of Employment Standards (Respondent) (*Withdrawn*)

0320-12-ES: Steve Baas (Applicant) v. Muskoka Delivery Services Inc., and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0335-12-ES: 1819319 Ontario Inc. Dealer for Public Mobile (Applicant) v. Valerie Delgado Bosso, and Director of Employment Standards (Respondent) (*Dismissed*)

0367-12-ES: Toronto Service Centre Inc. (Applicant) v. Eric Anderson, and Director of Employment Standards (Respondent) (*Granted*)

0373-12-ES: CRS Granite Ltd. operating as CRS Granite (Applicant) v. Justin Green and, Director of Employment Standards (Respondent) (*Granted*)

0386-12-ES: Dino Amodio (Applicant) v. Fieldstone Landscaping & Construction Inc. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0410-12-ES: Leslie Marshall (Applicant) v. 2221265 Ontario Inc. o/a Thermo-Bilt Windows & Doors, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0486-12-ES: Dinesh Kumar, a Director of 2263630 Ontario Inc. operating as Twice the Deal Pizza (Applicant) v. Larry Scotchmer and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0497-12-ES: Bata Facility and Security Systems Corporation o/a Bata Facility and Security Systems Corp. (Applicant) v. Millicent Williams and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0575-12-ES: Adelia Accardi, A Director of Pro Vita Excavation and Grading Ltd (Applicant) v. Carlo Massara, Director of Employment Standards, Christopher Menchenton (Respondent) (*Endorsed Settlement*)

0587-12-ES: Orkin Canada (Applicant) v. Manazar Haq, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0594-12-ES: Innofit Consulting Group (I.C.G.) Inc. o/a Just Dyer, Innofit Inc. (Applicant) v. Kristen Anderson, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0645-12-ES: Opal Rainford (Applicant) v. 2052544 Ontario Inc. o/a York House, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0660-12-ES: Burt Transportation Services Ltd. BTS Network Inc. (Applicant) v. Gordon M Brownrigg, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0697-12-ES: 2005302 Ontario Ltd. c.o.b. Fire on the East Side (Applicant) v. Kristen Maloney, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0714-12-ES: Transpharm Canada Inc. operating as Toronto Institute of Pharmaceutical Technology (Applicant) v. Shari-Lynne Yasin and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0718-12-ES: Long & Morris Property Management Ltd. (Applicant) v. Ronda Piper, Director Of Employment Standards (Respondent) (*Endorsed Settlement*)

0731-12-ES: Renokay (Applicant) v. Doug Howlett (Respondent) (*Dismissed*)

0738-12-ES: Dianna Rizzolopez (Applicant) v. Securitas Canada Limited/Securitas Canada Limitee and, Director of Employment Standards (Respondent) (*Terminated*)

0744-12-ES: Ronald R. Terry (Applicant) v. 1106180 Ontario Inc./Forward Precision Tools & Machinery and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0750-12-ES: L.M.N.O.P Toys Inc. (Applicant) v. Ann Chenier, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0818-12-ES: Shredex Inc. (Applicant) v. Monica Jones, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0828-12-ES: 2204289 Ontario Ltd. o/a Sparks Salon (Applicant) v. Ayako Hamado, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0829-12-ES: 2204289 Ontario Ltd. operating as Sparks Salon (Applicant) v. Ayako Hamado, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0876-12-ES: Louis A. Debono o/a Angelo's of Dover (Applicant) v. Jeffrey Pierson and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0899-12-ES: Jeremy Roberts, Director of 1665933 Ontario Inc. o/a Graphic Wonders (Applicant) v. Mr. Adrian LaCroix, Director of Employment Standards (Respondent) (*Terminated*)

0932-12-ES; 0933-12-ES; 1087-12-ES; 1088-12-ES: Hui-Hsien (Florence) Wei (Applicant) v. Havcare Investments Inc. and, Director of Employment Standards (Respondent); Frank Chacra (Applicant) v. Havcare Investments Inc. and, Director of Employment Standards (Respondent); Havcare Investments Inc. and (Applicant) v. Hui-Hsien (Florence) Wei, Director of Employment Standards (Respondent); Havcare Investments Inc. (Applicant) v. Frank Chacra and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0971-12-ES: Yves Gagnon (Applicant) v. NitroMicro Systems and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0974-12-ES: Rebecca Cardinal (Applicant) v. Lambeth Subs Ltd. o/a Subway and, Director of Employment Standards (Respondent) (*Withdrawn*)

0976-12-ES: Max Aicher (North America) Limited (Applicant) v. Carol McLaughlin and, Director of Employment Standards (Respondent) (*Withdrawn*)

0979-12-ES: 3M Canada Holdings Ltd. operating as 3M Canada Company (Applicant) v. Paulina Adamkowska and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0981-12-ES: Carleton Gordon (Applicant) v. P.A.I. Canada Inc. and, Director of Employment Standards (Respondent) (*Terminated*)

0990-12-ES: Takeshi D. Yamamoto (Applicant) v. Church & Dwight Canada Corp., and Director of Employment Standards (Respondent) (*Terminated*)

1065-12-ES: Dale M. Hotchkiss (Applicant) v. Courtland Bakery Limited, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1067-12-ES: Paulette K. Pelletier-Kelly (Applicant) v. Gestalt Institute of Toronto, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1126-12-ES: John Walsh a director of Pickering/Ajax Truck Centre Inc. (Applicant) v. Gregory Bortsman, Director of Employment Standards (Respondent) (*Terminated*)

1144-12-ES: Linda Attisha (Applicant) v. Instore Focus Inc. and, Director of Employment Standards (Respondent) (*Terminated*)

1225-12-ES: A Touch of Love inc. (Applicant) v. Cheryl Poitras and, Director of Employment Standards (Respondent) (*Terminated*)

1337-12-ES: Sturdell Industries Inc. (Applicant) v. Wendy Day and, Director of Employment Standards (Respondent) (*Withdrawn*)

1425-12-ES: Stahle Construction Inc. (Applicant) v. Gary Taylor, and Director of Employment Standards (Respondent) (*Terminated*)

1440-12-ES: Senda Express Solutions Inc. (Applicant) v. Director of Employment Standards (Respondent) (*Terminated*)

1447-12-ES: Hairazor's Inc. o/a Blackfriars Salon & Spa Ltd. (Applicant) v. Amanda Paskaruk, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1511-12-ES: Mary Smith (Applicant) v. Mike Katsargins operating as Superior Restaurant, Director of Employment Standards (Respondent) (*Terminated*)

1565-12-ES: 2295754 Ontario Inc. o/a Hampton Inn and Suites (Applicant) v. Victoria Lynne Davidson, and Director of Employment Standards (Respondent) (*Terminated*)

1569-12-ES: Direct Mail Marketing Group Limited (Applicant) v. Pauline M. Lacelle, and Director of Employment Standards (Respondent) (*Terminated*)

1674-12-ES: Teresa Kathleen Clark (Applicant) v. Total Image Holdings Ltd. and 1008161 Ontario Inc., Director of Employment Standards (Respondent) (*Dismissed*)

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

0278-12-HS: Moxie's Grill and Bar (Applicant) v. Shawn Thompson, Inspector (Respondent) (*Withdrawn*)

1037-12-HS: ETFO Simcoe County Elementary Teachers Federation (Applicant) v. Simcoe County District School Board and, a Director under the Occupational Health and Safety Act (Respondent) (*Dismissed*)

1549-12-HS: Bijan Ghayouri (Applicant) v. Serco DES Inc. (Drive Test) and, A Director under the Occupational Health and Safety Act (Respondent) (*Terminated*)

1622-12-HS: Peel District School Board (Applicant) v. Canadian Union of Public Employees, Local 1628 and Local 2544, A Director under the Occupational Health and Safety Act (Respondent) (*Dismissed*)

1769-12-HS: Ontario Public Service Employees Union (Applicant) v. Ministry of Community Safety and Correctional Services (Hamilton Wentworth Detention Centre) and, Lou Parco, Inspector (Respondent) (*Withdrawn*)

PUBLIC SERVICE OF ONTARIO ACT, 2006

1807-12-M: Marek Kicinski (Applicant) v. CUPE Local 966 (Respondent) (*Withdrawn*)

REFERRAL FROM MINISTER

0017-12-M: Retirement Residence Group (R.E.I.T.) at Trafalgar Lodge (Applicant) v. Canadian Union of Public Employees and Its Local 4762 (Respondent) (*Terminated*)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

0011-10-U: Catherine Rankin (Applicant) v. United Food and Commercial Workers Canada, Local 1000A (Respondent) (*Dismissed*)

1802-11-ES: Gary Smith (Applicant) v. 1725687 Ontario Inc. o/a Andy & Frank Excavating and, Director of Employment Standards (Respondent) (*Dismissed*)

1859-11-ES: Trivest Developments Corporation (Applicant) v. Linda Murphy and, Director of Employment Standards (Respondent) (*Granted*)

2509-11-U: Carol Hall (Applicant) v. Canadian Union of Public Employees and its Local 973 (Respondent) v. The City of Guelph (Intervener) (*Dismissed*)

3081-11-ES: Alfred Soosaipillai (Applicant) v. Magdello Restaurants Inc. and Director of Employment Standards (Respondent) (*Dismissed*)

3365-11-ES: 1808986 Ontario Inc. o/a Bloor Village Grill House (Applicant) v. Jose Gomes and Director of Employment Standards (Respondent) (*Dismissed*)

3473-11-ES: Yummy Bar-B-Q (Applicant) v. Geung Ji Lee and, Director of Employment Standards (Respondent) (*Dismissed*)

0468-12-M: Communications, Energy and Paperworkers Union of Canada and its Local 7-0-1 (Applicant) v. Dilico Anishinabek Family Care (Respondent) (*Dismissed*)

0727-12-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Mike Betti, a sole proprietor c.o.b. as Metro Forming (Respondent) (*Dismissed*)

1159-12-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Nova Trimax Corporation, Trimax Development Group Inc. and Quadcom Development Group Inc. (Respondent) (*Dismissed*)

1435-12-R: John Riley (Applicant) v. Service Employees Intl - Local 1 Unit 513A - Medex (Respondent) v. Extendicare (Canada) Inc. (Intervener) (*Dismissed*)



*Ontario Labour Relations Board,
505 University Avenue,
Toronto, Ontario
M5G 2P1*

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